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I. Introduction

1. At its forty-second session, in 2009, the Commission requested the Secretariat to prepare a study on electronic transferable records in the light of proposals received at that session (A/CN.9/681 and Add.1, and A/CN.9/682).[1]

2. At its forty-third session, in 2010, the Commission had before it additional information on the use of electronic communications for the transfer of rights in goods, with particular regard to the use of registries for the creation and transfer of rights (A/CN.9/692, paras. 12-47). At that session, the Commission requested the Secretariat to convene a colloquium on relevant topics, namely, electronic transferable records, identity management, electronic commerce conducted with mobile devices and electronic single window facilities.[2]

3. At its forty-fourth session, in 2011, the Commission had before it a note by the Secretariat (A/CN.9/728 and Add.1) summarizing the discussions during the colloquium on electronic commerce (New York, 14-16 February 2011).[3] After discussion, the Commission mandated the Working Group to undertake work in the field of electronic transferable records.[4] It was recalled that such work would be beneficial not only for the generic promotion of electronic communications in international trade, but also to address some specific issues such as assisting in the implementation of the United Nations Convention on the Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the "Rotterdam Rules").[5] In addition, the Commission agreed that work regarding electronic transferable records might include certain aspects of other topics such as identity management, use of mobile devices in electronic commerce and electronic single window facilities.[6]

4. At its forty-fifth session (Vienna, 10-14 October 2011), the Working Group began its work on various legal issues relating to the use of electronic transferable records, including possible methodology for future work by the Working Group (A/CN.9/737, paras. 14-88). It also considered the work of other international organizations on that subject (A/CN.9/737, paras. 89-91).

5. At its forty-fifth session, in 2012, the Commission expressed its appreciation to the Working Group for the progress made and commended the Secretariat for its work.[7] There was general support for the Working Group to continue its work on electronic transferable records and the need for an international regime to facilitate cross-border use of electronic transferable records was emphasized.[8] In that context, the desirability of identifying and focusing on specific types of or specific issues

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[1] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 343.

[2] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 250.

[3] Information about the colloquium is available at the date of this document from www.uncitral.org/uncitral/en/commission/colloquia/electronic-commerce-2010.html.

[4] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 238.

[5] Ibid., para. 235.

[6] Ibid.

[7] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 82.

[8] Ibid., para. 83.

related to electronic transferable records was mentioned.[9] After discussion, the Commission reaffirmed the mandate of the Working Group relating to electronic transferable records and requested the Secretariat to continue reporting on relevant developments relating to electronic commerce.[10]

6. At its forty-sixth session (Vienna, 29 October-2 November 2012), the Working Group continued its examination of the various legal issues that arose during the life cycle of electronic transferable records (A/CN.9/761, paras. 24-89). The Working Group confirmed the desirability of continuing work on electronic transferable records and the potential usefulness of guidance in that field. It was widely felt that generic rules based on a functional approach should be developed encompassing various types of electronic transferable records (A/CN.9/761, paras. 17-18). As to future work, broad support was expressed for the preparation of draft provisions on electronic transferable records to be presented in the form of a model law, without prejudice to the decision to be made by the Working Group on the final form (A/CN.9/761, paras. 90-93).

7. At its forty-seventh session (New York, 13-17 May 2013), the Working Group had the first opportunity to consider the draft provisions on electronic transferable records. It was reaffirmed that the draft provisions should be guided by the principles of functional equivalence and technology neutrality, and should not deal with matters governed by the underlying substantive law (A/CN.9/768, para. 14). As to future work, it was noted that while the draft provisions were largely compatible with different outcomes that could be achieved, caution should be exercised to prepare a text that had practical relevance and supported existing business practices, rather than regulated potential future ones (A/CN.9/768, para. 112).

8. At its forty-sixth session, in 2013, the Commission noted that the work of the Working Group would greatly assist in facilitating electronic commerce in international trade.[11] After discussion, the Commission reaffirmed the mandate of the Working Group and agreed that work towards developing a legislative text in the field of electronic transferable records should continue.[12] It was further agreed that whether that work would extend to identity management, single windows and mobile commerce would be assessed at a future time.[13]

9. At its forty-eighth session (Vienna, 9-13 December 2013), the Working Group continued its work on the preparation of draft provisions on electronic transferable records. The Working Group also took into consideration legal issues related to the use of electronic transferable records in relationship with the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 7 June 1930) and the Convention Providing a Uniform Law for Cheques (Geneva, 19 March 1931) (A/CN.9/797, paras. 109-112).

10. At its forty-ninth session (New York, 28 April-2 May 2014), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.128 and its addendum. The Working Group focused on the discussion on the concepts of original, uniqueness, and integrity of an

[9] Ibid.

[10] Ibid., para. 90.

[11] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 227.

[12] Ibid., paras. 230 and 313.

[13] Ibid., para. 313.

electronic transferable record based on principles of functional equivalence and technological neutrality.

11. At its forty-seventh session, in 2014, the Commission took note of the Working Group's key discussions at its forty-eighth and forty-ninth sessions.[14] Noting that the current work of the Working Group would greatly assist in facilitating electronic commerce in international trade, the Commission reaffirmed the mandate of the Working Group to develop a legislative text on electronic transferable records.[15]

12. At its fiftieth session (Vienna, 10-14 November 2014), the Working Group continued its work on the preparation of draft provisions as presented in document A/CN.9/WG.IV/WP.130 and Add.1. Subject to a final decision to be made by the Commission, the Working Group agreed to proceed with the preparation of a draft model law on electronic transferable records (A/CN.9/828, para. 23). It was suggested that the draft Model Law should provide for both electronic equivalents of paper-based transferable documents or instruments and for transferable records that existed only in an electronic environment. It was agreed that priority should be given to the preparation of provisions dealing with electronic equivalents of paper-based transferable documents or instruments, and that those provisions should be subsequently reviewed and adjusted, as appropriate, to accommodate the use of transferable records that existed only in an electronic environment (A/CN.9/828, para. 30). Part II of this note contains the draft provisions reflecting the deliberations and decisions of the Working Group during that session (A/CN.9/828, paras. 20-111).

II. Organization of the session

13. The Working Group, composed of all States members of the Commission, held its fifty-first session in New York from 18 to 22 May 2015. The session was attended by representatives of the following States members of the Working Group: Armenia, Austria, Belarus, Brazil, China, Colombia, Denmark, Ecuador, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Kuwait, Liberia, Malaysia, Mexico, Pakistan, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Thailand, Turkey, United States of America and Venezuela (Bolivarian Republic of).

14. The session was also attended by observers from the following States: Belgium, Egypt, Libya, Malta, Myanmar, Qatar and Sweden.

15. The session was also attended by observers from the European Union.

16. The session was also attended by observers from the following international organizations:

International non-governmental organizations: African Center for Cyberlaw and Cybercrime Prevention (ACCP), Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), American Bar Association (ABA), CISG Advisory Council, Comité Maritime International (CMI), European

[14] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17).
[15] Ibid.

Law Students' Association (ELSA), International Federation of Freight Forwarders Associations (FIATA), and Law Association for Asia and the Pacific (LAWASIA).

17. The Working Group elected the following officers:

Chairman: Ms. Giusella Dolores FINOCCHIARO (Italy)

Rapporteur: Ms. Lasminingsih PRADJAKUSUMAH (Indonesia)

18. The Working Group had before it the following documents: (a) Annotated provisional agenda (A/CN.9/WG.IV/WP.131); (b) A note by the Secretariat on draft provisions on electronic transferable records (A/CN.9/WG.IV/WP.132 and Add.1); and (c) Mobile commerce/payments effected with mobile devices, Possible future work — Proposal by Colombia (A/CN.9/WG.IV/WP.133).

19. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of the draft provisions on electronic transferable records.
5. Technical assistance and coordination.
6. Other business.
7. Adoption of the report.

III. Deliberations and decisions

20. The Working Group engaged in discussions on the draft provisions on electronic transferable records on the basis of document A/CN.9/WG.IV/WP.132 and Add.1. The deliberations and decisions of the Working Group are reflected in chapter IV below. The Secretariat was requested to revise the draft provisions to reflect those deliberations and decisions.

IV. Draft provisions on electronic transferable records

Draft article 10. [Paper-based transferable document or instrument] [Operative electronic record] [Electronic transferable record]

Paragraph 1

21. With regard to paragraph 1, different proposals were made. One proposal was to combine and simplify subparagraphs 1(a) and (b). In response, it was said that that proposal omitted to identify the electronic transferable record, which was one of the two elements needed to achieve functional equivalence of the use of paper-based transferable documents or instruments, the other being control.

22. Another proposal was to include in draft article 10 the concept of uniqueness in order to achieve singularity of claims. In support, it was said that the notion of control alone did not suffice to achieve singularity given the difference between control itself and its object, i.e., the electronic transferable record.

23. In response, it was said that the Working Group had already discussed the concept of uniqueness at its previous sessions. It was stated that the concept of "control" resulted in the singularity of claims. It was also said that draft article 10 together with the definition of electronic transferable record contained in draft article 3 could provide adequate safeguard against the possibility of multiple claims.

24. With regard to subparagraph 1(a), broad support was expressed for the retention of the words in the first set of square brackets. Concerns were expressed that the second set of square brackets could be viewed as introducing an additional definition of electronic transferable record beside that provided in draft article 3.

25. In response, it was said that the words in the first set of square brackets did not describe how to identify the electronic transferable record, whereas the words in the second set of square brackets were preferable as they did so by referring to "authoritative information". It was added that the words "authoritative information" implied a useful reference to the notion of uniqueness. It was proposed to include the words "containing the authoritative information" in the definition of electronic transferable record under draft article 3. However, it was pointed out that the purpose of a definition was to explain the meaning of a term and should not have operative effect.

26. After discussion, the Working Group agreed to retain the words "to identify that electronic record as the electronic transferable record" outside the square brackets and to delete the second set of square brackets. The Working Group further agreed to include in the definition of electronic transferable record the words "containing the authoritative information" in square brackets after the words "[an electronic record]" for further consideration of the Working Group.

Paragraph 2

27. With regard to the alternative wording in square brackets "legally relevant" and "authorized", different views were expressed. It was said that an electronic transferable record should only reflect authorized changes as those were relevant for ensuring integrity. It was stated that those changes would be authorized by system designers. Some support was also expressed for retaining the words "legally relevant" or using the word "legitimate".

28. However, it was also said that the term "authorized" would introduce a standard for electronic transferable records that did not exist for paper-based documents or instruments. In that regard, it was noted that any "authorized" change would be authorized by the parties to a transaction and not by a system developer. It was explained that only substantive law and party autonomy were relevant to define authorized changes and that therefore both drafting suggestions should be deleted. In that line, it was suggested to delete the words ", including any [legally relevant][authorized] change that arises [throughout its life cycle] [from its creation until it ceases to have any effect or validity]," since the draft definition of electronic transferable record already covered all changes in the life cycle of an electronic transferable record. In response, it was said that that suggestion did not capture the dynamic nature of an electronic transferable record, in which information necessarily changed. Reference was also made to draft articles 21 and 27 as relevant for the notion of integrity.

29. The Working Group agreed to retain the words "from its creation until it ceases to have any effect or validity" outside square brackets and to delete the words "life cycle" throughout the draft provisions.

30. After discussion, the Working Group agreed to delete the words "legally relevant", and to retain the words ", including any [authorized] change that arises from its creation until it ceases to have any effect or validity," in square brackets for further consideration.

Draft article 18. Delivery

31. It was recalled that under substantive law the transfer of a paper-based transferable document or instrument might require both the delivery of that document or instrument and its endorsement. In that regard, it was explained that the respective draft provision would therefore have to provide for the functional equivalent of both delivery and endorsement. However, it was added, under its current formulation, draft article 18 could be misread as establishing the transfer of an electronic transferable record, and not the transfer of control over that record, as functional equivalent to delivery.

32. In that line, broad support was expressed for adopting the alternative text of draft article 18 proposed in paragraph 33 of A/CN.9/WG.IV/WP.132/Add.1. It was indicated that the draft definition of transfer was redundant under that alternative draft of article 18 and therefore should be deleted and the words "transfer of control" should be used throughout the text where needed. As an editorial matter, it was also suggested to merge draft articles 17 and 18 to further improve clarity.

33. The Working Group agreed to retain the text of draft article 18 contained in paragraph 33 of A/CN.9/WG.IV/WP.132/Add.1 and to place it in draft article 17 as its paragraph 3. The Working Group further agreed to delete the definition of "transfer" contained in draft article 3.

Draft article 17. Possession

34. Different views were expressed with respect to the alternative wording in subparagraph 1(b)(i). It was stated that the term "generated" was used in other UNCITRAL texts without difficulty and was therefore preferable. However, it was noted that the term "issued" was used in the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the "Rotterdam Rules"). In response, it was said that the term "issued" had substantive law implications, and that therefore it was appropriate for a substantive text such as the Rotterdam Rules, but not for an enabling text such as the draft provisions (see also A/CN.9/828, paras. 52-54).

35. After discussion, the Working Group agreed to retain the term "generated" outside square brackets and to delete the term "issued".

Draft article 12. Time and place of dispatch and receipt of electronic transferable records

36. It was recalled that draft article 12 was based on existing UNCITRAL provisions dealing with electronic contracting. It was noted that time and place of dispatch and receipt had different relevance for contract formation and management,

and for the use of electronic transferable records. In that line, broad support was expressed for the view that the alternative text in paragraph 5 of document A/CN.9/WG.IV/WP.132/Add.1 was preferable to paragraphs 1 and 2 of draft article 12. It was further noted that registry systems would record the relevant events in the life cycle of the electronic transferable record with time-stamping and that users of those systems would agree to contractual rules containing a choice of applicable law. Therefore, it was concluded, time and place of dispatch and receipt had limited practical relevance for electronic transferable records.

37. In response, it was said that private international law rules relied on the place of the transfer of paper-based documents or instruments to determine the applicable law. Hence, determining the place of receipt and dispatch of electronic transferable records was needed to provide legal certainty. It was added that the existence of different laws was a reality and that one purpose of the draft provisions was to pursue legal harmonisation.

38. It was further suggested that recording the time of endorsements was necessary to establish the sequence in the action of recourse given that the dematerialised nature of electronic transferable records did not make that sequence apparent as in paper-based documents or instruments.

39. One proposal was to include the words "unless otherwise agreed" at the beginning of draft article 12 to clarify that parties had autonomy in determining time and place of dispatch and receipt of electronic transferable records. In response, it was clarified that draft article 5 on party autonomy would apply to draft article 12.

40. The Working Group agreed to (i) substitute draft article 12, paragraphs 1 and 2 with the alternative text contained in paragraph 5 of A/CN.9/WG.IV/WP.132/Add.1; (ii) retain the words "or permits" outside the square brackets in the resulting draft article 12, paragraph 1; and (iii) retain draft article 12, paragraphs 3 and 4 in square brackets for further consideration of the Working Group.

"Where the law requires or permits"

41. With regard to the alternative texts proposed to reflect instances in which the law required or permitted certain actions, different views were expressed.

42. Broad support was expressed for the view that a requirement would not include cases in which the law merely permitted an action. Therefore, it was suggested that the words "or permits" should be retained outside square brackets in the alternative text proposed under paragraph 5 of document A/CN.9/WG.IV/WP.132/Add.1. However, the view was expressed that reference to requirement in the law would include as well instances in which the law merely permitted an action (see also A/CN.9/WG.IV/WP.132/Add.1, para. 8) and that therefore the words "or permits" were redundant and should be deleted.

43. The view was also expressed that draft article 12 should refer to the consequences in case a requirement was not met in order to deal with instances of permission. To that end, different drafting proposals were made. In response, it was explained that any legal requirement implied consequences for the case it was not met, and that therefore the suggested language was redundant. For the sake of

clarity, it was suggested that such understanding should be contained in explanatory materials accompanying the draft provisions.

44. With regard to the alternative drafts of article 12 under paragraphs 9 and 10 of document A/CN.9/WG.IV/WP.132/Add.1, it was said that the use of the word "shall" was preferable. It was noted that the words "may be" used in the two other alternative drafts would not be appropriate for instances "where the law requires".

45. A concern was expressed that the word "shall" could be misread as establishing new substantive requirements that would apply where the law permits an outcome. It was therefore suggested that language such as "the law is met" be used to address mandatory and permissive situations together. In response, it was stated that, in line with the principle of non-discrimination, where the law provided a possibility, a reliable method should be used only in case a party decided to avail itself of that possibility.

46. The Working Group requested the Secretariat to revise the draft provisions referring to requirement and permission in light of the text adopted for draft article 12, paragraph 1, and to reflect in explanatory materials the understanding that any legal requirement implied consequences for the case it was not met.

Draft article 14. [Issuance of] multiple originals

47. It was suggested that draft article 14 should focus on transferable documents as only those documents were in practice concerned by the use of multiple originals. In response, it was noted that uniform and national laws on multiple originals of transferable instruments, namely bills of exchange, existed and that those laws needed to be transposed in an electronic environment, too. In that respect, it was also noted that bills of exchange might be excluded from the scope of the draft provisions under draft article 2, paragraph 3.

48. A question was raised whether draft article 10, paragraph 1(a), in the part preventing the unauthorized replication of an electronic transferable record implicitly admitted its authorized replication and therefore the issuance of multiple originals. In that case, it was added, draft article 14 might be redundant.

49. In response, it was noted that that portion of draft article 10 dealt with copies, which did not have the same legal effects as original electronic transferable records, while draft article 14 explicitly enabled the use of multiple original electronic transferable records. Hence, it was concluded, draft article 14 should be retained.

50. After discussion, the Working Group agreed to retain draft article 14, paragraph 1, outside square brackets. It also agreed to remove the second set of square brackets, to delete the word "[operative]" and to insert the word "transferable" between "electronic" and "records".

51. It was indicated that the rule in draft article 14, paragraph 2, was useful but had a substantive nature. It was therefore suggested that it should be redrafted so as to limit its scope to cases where substantive law contained a requirement to indicate the number of multiple originals. The Working Group agreed on that suggested approach, pending consideration of a new text at a future session.

52. It was further indicated that draft article 14, paragraph 3, contained a substantive rule that was not appropriate for the draft provisions. It was added that

article e8 of the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation ("eUCP") was not appropriate in that context since it dealt with both originals and copies. After discussion, the Working Group agreed to delete draft article 14, paragraph 3.

Draft article 23. Change of medium

53. It was alternatively indicated that draft article 23 should aim at protecting the rights of the issuer, of the obligor and of the holder, and it was suggested that its focus should change accordingly. It was added that challenges were posed by the variety of schemes used in the various paper-based transferable documents or instruments, and, in particular, by the fact that issuer and obligor (drawee) did not correspond in a bill of exchange.

54. It was suggested that the draft article should be simplified in order to provide the flexibility needed to accommodate business practice. In that line, it was indicated that its main goal was to enable change of medium while ensuring that no information would be lost because of that change. It was further indicated that change of medium should not affect in any manner the rights and obligations of the parties.

55. It was added that the draft provision should indicate that the replaced document, instrument or record should cease to have any legal effect or validity. It was suggested that the draft article should set forth an obligation to retain the replaced document, instrument or record in order to facilitate verification of information in case of dispute.

56. It was also suggested that the draft article should explicitly require the insertion of a statement indicating the change of medium in the replacing document, instrument or record. It was explained that such provision would not create a new information obligation, as change of medium was an event to be recorded under general rules on integrity.

57. The following text of draft article 23 was suggested:

"1. A change of medium of a paper-based transferable document or instrument to an electronic transferable record may be performed if a method that is as reliable as appropriate for the purpose of the change of medium is used whereby:

(a) The electronic transferable document includes all the information contained in the paper-based transferable document or instrument;

(b) A statement indicating a change of medium is inserted in the electronic transferable record;

(c) A statement indicating that the paper-based transferable document or instrument has ceased to have any effect or validity is inserted in the paper-based transferable document or instrument; and

(d) The paper-based transferable document or instrument is retained.

2. Upon issuance of the electronic transferable record in accordance with paragraph 1, the paper-based transferable document or instrument ceases to have any effect or validity.

3. A change of medium in accordance with paragraph 1 does not affect the rights and obligations of the parties."

58. It was explained that the requirements contained in paragraph 1, subparagraphs (a) to (d) were concurrent and that the sanction for non-compliance with any of them was the invalidity of the change of medium. It was also explained that the obligation to retain the document, instrument or record terminated due to change of medium was the same regardless of the medium.

59. With regard to subparagraph 1(d), it was said that the retention of a paper-based transferable document or instrument would be subject to different requirements than the retention of an electronic transferable record. It was further said that the requirements for retention of a paper-based transferable document or instrument would be set forth in substantive law.

60. A further suggestion was to recast the draft proposal to clearly set out the criteria for the reliable method as a new paragraph 2. According to that proposal, the word "whereby" in paragraph 1 would be deleted and the new paragraph 2 would begin with the words "For the change of medium to take effect, the following requirements shall be met:". Numbering and cross-reference to paragraphs would change accordingly. That proposal found broad support.

61. An additional suggestion was to include paragraph 3 in the chapeau of paragraph 1 to simplify the proposal. In response, it was said that it should be the result of paragraph 3 as a statement of law, and not the result of the use of a reliable method referred to in the chapeau of paragraph 1, that the rights and obligations of the parties were not affected, and that therefore those rights and obligations should be addressed separately for the sake of clarity.

62. A concern was expressed that the draft proposal did not determine whose consent was needed for a change of medium and that, as a result of the change of medium, parties could be obliged to use electronic means. In response, it was recalled that draft article 23 would be subject to draft article 13, which contained the general rule that the use of electronic means was voluntary. In addition, it was clarified that draft article 23 was intended to accommodate electronic transferable records corresponding to different types of paper-based transferable documents or instruments, and that substantive law would identify those parties whose consent was relevant for change of medium.

63. It was suggested to delete subparagraphs 2(c) and (d), since those requirements were not necessary and might result in practical challenges. In response, it was said that those requirements aimed at preventing fraud, as an obligor might not be able to determine on its face the invalidity of a paper-based transferable document or instrument that had been subject to change of medium. It was added that the compliance with subparagraph 2(c) as a condition for validity of the change of medium would prevent fraud. In turn, it was said that commercial operators could voluntarily include statements and adopt retention practices, if deemed useful. Broad support was expressed for the deletion of subparagraphs 2(c) and (d).

64. After discussion, the Working Group agreed: (i) to delete the words "whereby" in paragraph 1; (ii) that the new paragraph 2 would begin with the words "For the change of medium to take effect, the following requirements shall be met:"; (iii) to

delete subparagraphs 2(c) and (d); (iv) and to delete paragraphs 4 and 5 of draft article 23 contained in paragraph 45 of document A/CN.9/WG.IV/WP.132/Add.1 as a result of the newly adopted draft article 23. The Working Group requested the Secretariat to prepare a corresponding provision for the change from electronic to paper medium.

Draft article 25. Termination of an electronic transferable record

65. The Working Group recalled its decision to delete the definition of "transfer" contained in draft article 3 (see paragraph 33 above).

66. It was said that the dematerialized nature of an electronic transferable record made its destruction difficult, which posed a risk of further circulation of the record to be destroyed, particularly when an issuer wished to destroy the original instrument when re-issuing that instrument. Therefore, it was stated that a provision on termination was necessary in order to provide a functional equivalent to the destruction of the paper-based instrument.

67. In response, it was explained that a distinction should be made between termination and destruction. It was said that the contract would provide for the instrument's effectiveness to cease upon performance, and that termination was not made dependent upon formal requirements being met. Therefore, a functional equivalence rule on termination was not necessary. It was, however, suggested that a reliable method would be required to ensure that an electronic transferable record ceased to have effect.

68. After discussion, the Working Group agreed to delete draft article 25.

Draft article 26. Use of an electronic transferable record for security rights purposes

69. It was indicated that paper-based transferable documents or instruments were commonly used as collateral for security rights purposes and that the draft provisions should enable the same use of electronic transferable records. It was further indicated that the draft provisions should not aim at displacing any rule of law on security rights, in line with the general principle of their non-interference with substantive law.

70. It was said that whilst draft article 26 could be unnecessary, it may serve a useful declaratory value.

71. It was noted that the alternative draft of article 26 contained in paragraph 67 of document A/CN.9/WG.IV/WP.132/Add.1 referred to notions already contained in the draft provisions such as delivery or endorsement of electronic transferable records with respect to security rights. It was indicated that that alternative draft contained also references to substantive law concepts, such as "perfection of security rights or interests", which had different meaning in the various legal systems, and that therefore such references could introduce elements of disharmony.

72. It was stated that one definition of "securities" included security rights. Hence, the concern was expressed that the exclusion in draft article 2, paragraph 2, of securities from the scope of application of the draft provisions could be read as preventing the use of electronic transferable records for security rights purposes. In response, it was stated that the word "securities" in draft article 2, paragraph 2, did

not extend to the use of electronic transferable records as collateral. Broad support was expressed for clarifying in explanatory materials on draft article 2, paragraph 2, that the draft provisions did not prohibit the use of electronic transferable records as collateral.

73. After discussion, the Working Group agreed that draft article 26 should be deleted. The Working Group also requested the Secretariat to clarify in the materials illustrating draft article 2, paragraph 2, that the term "securities" did not include security rights and that therefore the model law did not prevent the use of electronic transferable records for security rights.

Draft article 27. Retention of [information in] an electronic transferable record

74. Broad support was expressed for the view that draft article 27 aimed at retaining the information contained in an electronic transferable record, but not the transferable record itself. In that line, it was said that an assumption underlying draft article 27 was that the record to be retained had been terminated and could not further circulate. Therefore, the retained electronic record could not meet anymore the requirements of an electronic transferable record.

75. It was explained that different retention requirements could be contained in various pieces of legislation and that each law reflected a different goal. For instance, special retention and archival requirements could be set forth for tax and accounting purposes, whereas, it was noted, draft paragraph 1 aimed at providing general retention requirements for evidentiary purposes. It was added that such general rule on retention requirements could be found in the law on electronic transactions and that therefore draft paragraph 1 was redundant.

76. It was said that draft paragraph 2 specified the principle that the requirements set forth in draft paragraph 1 could be fulfilled directly or with the assistance of a third party. However, it was added, because paragraph 1 focused on a requirement and not a party, paragraph 2 was unnecessary.

77. After discussion, the Working Group decided to delete draft article 27.

Third-party service providers

78. With respect to draft section D relating to third-party service providers, it was indicated that its general approach was over-regulatory. It was added that the enabling scope of the draft provisions was not compatible with regulatory concerns, which should be addressed in other legislation, and that it was not appropriate for the draft provisions to contain any regulatory sanction. It was added that the subject dealt with in draft articles 28 and 29 could be addressed in explanatory material or a guidance document. It was further noted that developments in technology and business practice recommended a flexible approach. It was stressed that the draft provisions should leave freedom of choice of third-party service providers as well as of the type of services requested and their reliability level.

79. Moreover, it was noted that the draft definition of "third-party service providers" contained in draft article 3 encompassed a large number of third parties involved in the use of electronic transferable records, such as lawyers and accountants, and that those third parties would not be in a position to meet the requirements set forth in draft articles 28 and 29. It was further indicated that the

relevant notion of "third-party service providers" seemed to focus on providers of technology used for the management of electronic transferable records. It was suggested that that draft definition should be revised accordingly.

80. However, the view was also expressed that one goal of the draft provisions was to increase confidence in the use of electronic transferable records, and that setting forth minimum requirements for providers of services related to the use of those records would have a positive impact on building that confidence. It was added that providing guidance, including through guidelines, on the matters dealt with by draft articles 28 and 29 would increase legal harmonisation, which was also a goal of the draft provisions. It was added that, lacking a regulation of minimum legal standards, a possibility existed, especially in oligopolistic markets, that the freedom of contract of users would be limited by the offer of similar contractual conditions by third-party service providers.

81. A suggestion was made that voluntary compliance schemes for the provision of services, whose adoption would give rise to legal presumptions, could offer a solution to some of the concerns expressed. However, it was added, the Working Group was not the right forum for that discussion given the enabling nature of the draft provisions.

82. After discussion, the Working Group decided to delete draft articles 28 and 29 as well as the definition of "third-party service provider" contained in draft article 3 and to place the material related to the subject of third-party providers in explanatory material or a guidance document.

"Control" and "Possession"

83. Broad agreement was expressed that control was the functional equivalent of possession. However, it was noted that the different understandings of possession and control in various legal systems created significant difficulty in defining control. One proposal to overcome that difficulty was to define control as the functional equivalent of possession and to leave the definition of "possession" to national law.

84. The Working Group agreed that open questions with regard to control were whether there was a need for: (i) a functional equivalence rule defining possession as control as in draft article 17; (ii) a definition of control or whether that definition was already contained in draft article 17; (iii) a definition of possession or whether that definition could be left to national law; and (iv) a list of requirements for a system concerning the security of transfer of an electronic transferable record.

85. A proposal was made to address concerns expressed with respect to avoiding multiple claims for performance:

> "Article 10. Paper-based transferable documents
>
> 1. Where the law requires a paper-based transferable document, or provides consequences for its absence, that requirement is met by an electronic record, provided that it replicates all the functions of a transferable document.
>
> 2. If a reliable method can be employed to identify an electronic record as an electronic transferable record that contains authoritative information constituting an electronic transferable record, and that always retains its

integrity, that electronic record may be deemed to have replicated all the functions of a transferable document.

3. If a reliable method can be employed to identify a person as one who has control of an electronic transferable record, that method is also deemed to have met the requirements of paragraph 1 of this article.

4. A person in control refers to a person reliably identified as one to whom an electronic transferable record is issued or transferred."

86. It was explained that the purpose of that proposal was to avoid multiple claims by combining the two prevailing approaches used to achieve that goal, namely "singularity" and "control". It was further explained that the "singularity" approach required the identification of an electronic record as the electronic transferable record that contained authoritative information through the use of a reliable method, while the "control" approach focused on the use of a reliable method to identify the person in control of the electronic transferable record. It was added that draft article 17 would need to be redrafted if the proposal was adopted. A comment was made that the "singularity" approach could apply in particular to token-based systems while the "control" approach could apply in particular to registry-based systems.

87. It was suggested to place paragraphs 1 and 2 of the proposal in draft article 10. It was also proposed that the reference to authoritative information in draft article 10, subparagraph 1(a), that was deleted according to an earlier decision (see paragraph 26 above) should be reinstated. It was noted that the concept of "integrity" contained in paragraph 2 of the proposal was already included in draft article 10, subparagraph 1(c).

88. It was proposed to discuss the definition of "electronic transferable record" contained in draft article 3 in conjunction with draft article 10. Concerns were expressed on the meaning of "all functions" of an electronic transferable record in paragraph 1 and of "authoritative information" in paragraph 2 of the proposal. With regard to the words "all functions", it was noted that those functions would be set out in substantive law.

89. In response, it was explained that, in order to achieve functional equivalence, "all functions" of a paper-based transferable document or instrument needed to be fulfilled. It was also said that the words "authoritative information" had been included to ensure singularity of the electronic transferable record. It was suggested that the term could be further explained in explanatory material.

90. The view was reiterated that a distinction should be drawn between control and the object of control (see paragraph 22 above) and that the proposal addressed that concern in so far as it contained a reference to "authoritative information". It was further said that only control of the electronic record containing authoritative information would provide the functional equivalent of possession of the paper-based transferable document or instrument, as both elements were necessary (see paragraph 21 above). Reference was made to Section 7-106 of the Uniform Commercial Code as an example of legislation endorsing that approach. In response, it was clarified that Section 7-106 of the Uniform Commercial Code only provided for "authoritative copy" as a safe harbour provision where a token system was used, and did not apply to a registry system. It was indicated that, while there

was no common understanding of the term "control", the approach taken in the proposal was acceptable in principle.

91. A proposal was made to include elements of paragraphs 3 and 4 of the proposal in draft article 17, paragraph 1(a) as follows:

> "A method is used to establish exclusive control of that electronic transferable record by a person and to reliably [identify] [establish] that person as the person in control."

92. It was also proposed to place draft articles 10 and 17 consecutively.

93. A concern was expressed that the word "exclusive" might lead to confusion, since control by definition was exclusive. In response, it was said that the notion of "exclusive" control might be obvious to some, but that the word "exclusive" could provide useful clarification. It was further stated that in the electronic environment there could be concurrent control of an electronic record by more than one person, and that therefore the word "exclusive" would provide clarity if draft article 17, paragraph 1(a), was intended to require exclusive control. Alternatively, it was added, clarification could be included in explanatory materials. In addition, it was said that that proposal would render paragraph 2 of draft article 17 redundant.

94. The Working Group agreed to retain the proposed text of draft article 17, paragraph 1(a), included in paragraph 91 above, and to delete draft article 17, paragraph 2.

Draft article 3. Definition of electronic transferable record

95. It was suggested that the definition of electronic transferable record should indicate that the electronic record that complied with the requirements set forth in draft article 10 was an electronic transferable record. In response, it was noted that draft article 10 dealt with the use of an electronic transferable record and that mere reference to that article would not suffice to define an electronic transferable record.

96. The view was also expressed that a definition of electronic transferable record would result from the joint reading of the definition of paper-based transferable document or instrument and of draft article 10 establishing functional equivalence between an electronic transferable record and a paper-based transferable document or instrument.

97. In response, it was said that a definition of electronic transferable record was needed for those electronic transferable records existing only in electronic form. In turn, it was recalled that current deliberations of the Working Group were limited to electronic transferable records that were functional equivalents of paper-based transferable documents or instruments, and that electronic transferable records existing only in electronic form would be discussed only at a later stage.

98. It was suggested that the definition of electronic transferable record should indicate that that record should contain the same information as its paper-based equivalent. It was added that draft article 15, on information requirements, was insufficient to that end.

Draft article 10. [Paper-based transferable document or instrument] [Operative transferable record] [Electronic transferable record]

99. A proposal was made to recast draft article 10, paragraph 1 as follows:

> "1. Where the law requires a paper-based transferable document or instrument or provides consequences for its absence, that requirement is met by an electronic record if:
>
> (a) The electronic record contains the information that would be required to be contained in an equivalent paper-based transferable document or instrument; and
>
> (b) A method is employed:
>
> (i) That is as reliable as appropriate to identify that electronic record as the authoritative record constituting the electronic transferable record [and to prevent its unauthorized replication];
>
> (ii) To render that electronic record capable of being subject to control from its creation until it ceases to have any effect or validity; and
>
> (iii) That is as reliable as appropriate, to retain the integrity of the electronic transferable record".

100. The following draft definition of electronic transferable record was also suggested, subject to further refinement in view of the discussions on draft article 10:

> "An electronic transferable record is an electronic record that contains all of the information that would make a paper-based transferable document or instrument effective and that complies with the requirements of article 10".

"Authoritative"

101. It was observed that the term "authoritative" was used in national law, for instance in Section 7-106 of the Uniform Commercial Code (see paragraph 90 above). However, it was added, that term required further clarification as different meanings had been attributed to it during the deliberations of the Working Group in light of legal and linguistic differences.

102. It was explained that the term "authoritative" referred to the identification of the operative record by the system. It was further explained that that term did not refer to the uniqueness of the information contained in the authoritative record, or to the "authorizing" function of the authoritative record.

103. In response, it was noted that the term "operative" was also unclear. It was suggested that the notion of control could be used instead. Alternatively, it was suggested that the term "authoritative" should be deleted and that reference to identification of the electronic transferable record as such should be inserted.

104. After discussion, the Working Group decided to retain the term "authoritative" pending further clarification of its meaning, including in explanatory materials, or its substitution with a more adequate word.

"Unauthorized replication"

105. The concern was expressed that the inclusion of the words "[and to prevent its unauthorized replication]" could be read as permitting the replication, albeit authorized, of the electronic transferable record, thus allowing for the circulation of several electronic transferable records and possibly exposing the obligor to multiple claims for performance.

106. It was explained that the notion of electronic transferable record presupposed the existence of only one electronic transferable record containing authoritative information, and that therefore any authorized reproduction could result only in non-transferable electronic records.

107. In response, it was noted that it was impossible to completely prevent replication of electronic records. It was also noted that other draft provisions aimed at preventing multiple claims. Therefore, it was suggested that a provision aimed at preventing unauthorized replication was not useful and posed practical challenges.

108. The Working Group agreed to delete the words "[and to prevent its unauthorized replication]".

V. Other business

109. The Working Group was informed about the possible topics for its future work submitted for the consideration of the Commission at its forthcoming forty-eighth session. In particular, reference was made to the note on possible future work on mobile commerce and mobile payments submitted by the Government of Colombia (A/CN.9/WG.IV/WP.133). That proposal explained that mobile commerce and mobile payments were increasingly in use in emerging economies and that the development of adequate legal rules could promote both electronic commerce and financial inclusion.

110. The Working Group was also informed that additional proposals submitted to the Commission included possible future work on identity management (A/CN.9/854) and on cloud computing (A/CN.9/823).

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I. Introduction

A. Facilitating the cross-border insolvency of multinational enterprise groups

1. At its forty-fourth session (December 2013), Working Group V (Insolvency Law) agreed to continue its work on the cross-border insolvency of multinational enterprise groups by developing provisions on a number of issues, some of which would extend the existing provisions of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide) and involve reference to the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (A/CN.9/798, para. 16). Discussion of those issues commenced at the forty-fifth session (April 2014) (A/CN.9/803).

B. Directors' obligations in the period approaching insolvency: enterprise groups

2. At its forty-fourth session, the Working Group had also agreed on the importance of addressing the obligations of directors of enterprise group companies in the period approaching insolvency, given that there were clearly difficult practical problems in this area and that solutions would be of great benefit to the operation of efficient insolvency regimes (A/CN.9/798, para. 23). At the same time, the Working Group noted that there were issues that needed to be considered carefully so that solutions would not hinder business recovery, make it difficult for directors to continue to work to facilitate that recovery, or influence directors to prematurely commence insolvency proceedings. In light of those considerations, the Working Group agreed that it would be helpful to have the next steps taken informally in an expert group, whose task would be to examine how part four of the Legislative Guide could be applied in the enterprise group context and to identify any additional issues (such as conflicts between a director's duty to its own company and the interests of the group, as well as issues of governing law) that might need to be addressed. The informal expert group reported back in the second half of 2014 with a draft text for consideration by the Working Group at its forty-sixth session (A/CN9/WG.V/WP.125).

C. Recognition and enforcement of insolvency-derived judgements

3. At its forty-fourth session, the Working Group had further agreed (A/CN.9/798, para. 30) that it should seek at an appropriate time a mandate from the Commission to commence work on the recognition and enforcement of insolvency-derived judgements, which had been discussed at the colloquium held in conjunction with the forty-fourth session in December 2013 (A/CN.9/815). At its forty-fifth session, the Working Group agreed (A/CN.9/803, para. 39(b)) that it should seek that mandate from the Commission at its forty-seventh session (2014). At that session, the Commission agreed that, in addition to the two topics concerning treatment of enterprise groups in insolvency, Working Group V's other priority should be to develop a model law or model legislative provisions to provide

for the recognition and enforcement of insolvency-derived judgements, which was said to be an important area for which no explicit guidance was contained in the Model Law. The Commission approved a mandate in accordance with those terms (A/69/17, para. 155). The Working Group commenced its deliberations on the topic at its forty-sixth session.

II. Organization of the session

4. Working Group V, which was composed of all States members of the Commission, held its forty-seventh session in New York from 26-29 May 2015. The session was attended by representatives of the following States Members of the Working Group: Argentina, Armenia, Austria, Brazil, Bulgaria, Canada, China, Denmark, France, Germany, Greece, India, Indonesia, Israel, Italy, Japan, Kenya, Malaysia, Mexico, Namibia, Pakistan, Panama, Philippines, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, and Venezuela (Bolivarian Republic of).

5. The session was attended by observers from the following States: Belgium, Chile, Dominican Republic, and Libya.

6. The session was attended by the following non-member States and entities: Holy See.

7. The session was also attended by observers from the European Union.

8. The session was also attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: World Bank, and World Intellectual Property Organization (WIPO);

(b) *Intergovernmental organizations*: Hague Conference on Private International Law (HCCH);

(c) *Invited international non-governmental organizations*: American Bar Association (ABA), Business Recovery & Insolvency Practitioners Association of Nigeria (BRIPAN), Comité Maritime International (CMI), European Law Students Association (ELSA), Fondation pour le Droit Continental (FDC), INSOL Europe, INSOL International, International Bar Association (IBA), International Insolvency Institute (III), Inter-Pacific Bar Association (IPBA), International Women's Insolvency and Restructuring Confederation (IWIRC), Law Association for Asia and the Pacific (LAWASIA), New York City Bar (NYCBAR), and Union Internationale des Avocates (UIA).

9. The Working Group elected the following officers:

Chairman: Mr. Wisit Wisitsora-At (Thailand)

Rapporteur: Mr. Emil Szczepanik (Poland)

10. The Working Group had before it the following documents:

(a) Annotated provisional agenda (A/CN.9/WG.V/WP.127);

(b) A note by the Secretariat on facilitating the cross-border insolvency of multinational enterprise groups (A/CN.9/WG.V/WP.128);

(c) A note by the Secretariat on the obligations of directors of enterprise group members in the period approaching insolvency (A/CN.9/WG.V/WP.129);

(d) A note by the Secretariat on the recognition and enforcement of insolvency-derived judgements (A/CN.9/WG.V/WP.130); and

(e) Observations by France on document A/CN.9/WG.V/WP.128 (A/CN.9/WG.V/WP.131).

11. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of: (a) the obligations of directors of enterprise group members in the period approaching insolvency; (b) facilitating the cross-border insolvency of multinational enterprise groups; and (c) the recognition and enforcement of insolvency-derived judgements.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

12. The Working Group commenced its deliberations with the obligations of directors of enterprise group members in the period approaching insolvency on the basis of document A/CN.9/WG.V/WP.129; followed by the cross-border insolvency of multinational enterprise groups on the basis of document A/CN.9/WG.V/WP.128; and the recognition and enforcement of insolvency-derived judgements on the basis of document A/CN.9/WG.V/WP.130. The deliberations and decisions of the Working Group on these topics are reflected below.

IV. Directors obligations in the period approaching insolvency: enterprise groups

13. The Working Group commenced its discussion of this topic on the basis of the draft recommendations and commentary contained in document A/CN.9/WG.V/WP.129. At the outset of the discussion, the Working Group confirmed that it would not be referring the text for adoption by the Commission in 2015, but that it would await further development of the work on enterprise groups to ensure that consistency between the texts was achieved. The Secretariat was requested to prepare a revised text based on the conclusions noted below for the forty-eighth session of the Working Group.

Recommendations 267-268

Purpose clause

14. The Working Group adopted the purpose clause, with the following revision of paragraph (d): changing the word "ensuring" to "taking reasonable steps to ensure".

Draft recommendation 267

15. The Working Group indicated its preference for Variant 2 of draft recommendation 267, and adopted it with the following revisions:

(a) Deletion of the words "the position of the enterprise group member in the enterprise group and the degree of integration between enterprise group members";

(b) Ensuring that the references to maximization of the value of the enterprise group as a whole or some of its parts were consistent throughout the purpose clause and draft recommendation 267, subparagraph (b);

(c) In the second sentence of subparagraph (b), changing the last phrase to read "are no worse off than if that group member had not been managed so as to promote such a solution"; and

(d) Changing the word "ensuring" in draft recommendation 267, subparagraph (b) to "taking reasonable steps to ensure".

Draft recommendation 268

16. The Working Group adopted draft recommendation 268 with the following revisions: deleting the text and square brackets around "[possible]" and deleting the brackets and retaining the text "not inconsistent with the obligations of the director to the group member of which they are director".

Commentary

17. A suggestion was made that the notion of balancing the interests of group members against each other in paragraph 7 of the commentary should be more nuanced, possibly through clarifying that it would only apply to mediating opposed rights where the director had conflicting obligations. In addition, it was proposed that the safeguard that creditors and other stakeholders should be no worse off than if the enterprise group solution had not been pursued should be reflected.

18. In respect of paragraph 23 of the commentary, it was suggested that the word "may" should be deleted in the last sentence. Further, in the third sentence of paragraph 25, it was suggested to add the phrase "relevant information regarding" after the word "disclose", and to substitute the word "reasonable" for the word "desirable". It was also suggested that the phrase "a good board process" in paragraph 27 was unclear and that reference should be made instead to good corporate governance.

Recommendations 269-270

Purpose clause

19. The Working Group adopted the purpose clause for draft recommendations 269 and 270 as drafted.

Draft recommendation 269

20. The Working Group agreed that the heading for the contents of the legislative provisions should be "Conflict of obligations" and that "[Conflicting obligations]" should be deleted. It was noted that there should be conformity between the heading of the commentary and the heading of the draft recommendation.

Draft recommendation 270

21. The Working Group indicated a preference for Variant 3 and approved the drafting with the following revisions:

(a) In subparagraph (a), deleting the word "exact" and adding the words "and extent" after the word "nature";

(b) In subparagraph (b), adding the words "including, in particular, the nature and extent of the conflict" after the phrase "relevant information";

(c) In subparagraph (d), retaining the text in the first set of square brackets, "Seeking the appointment of", and deleting the brackets surrounding it as well as the second bracketed text "[Appointing]"; and

(d) In subparagraph (e), deleting the phrase "and resignation will not exacerbate the situation".

22. A proposal to add to an appropriate location in draft recommendation 270 the words "submitting the decision for approval by a body or bodies that are not exposed to the conflict of interest" was not supported.

V. Facilitating the cross-border insolvency of multinational enterprise groups

23. The Working Group commenced its discussion of the topic on the basis of the text in document A/CN.9/WG.V/WP.128. A number of different views were expressed as to how discussion on the different parts of the text might be approached. It was acknowledged that if some of the domestic issues outlined in part I were not addressed, it might be difficult to address the cross-border issues in part II. It was observed that the purpose of the work was to limit the number of parallel proceedings commenced with respect to enterprise group members, and where that was not feasible, to increase coordination and cooperation. It was proposed that the possibility of improving domestic insolvency regimes in order to achieve those two goals should be examined, commencing with discussion of part II of the text; that discussion should assist in identifying which of the provisions in part I were needed. The Working Group agreed with that approach.

24. It was suggested that the new instrument should take the form of an addendum to the Model Law on Cross-Border Insolvency (the Model Law). It should focus

initially on the powers of the receiving court. Further, the text should contain a few key articles and should avoid changes to the existing provisions of the Model Law that were not strictly related to cross-border insolvency of enterprise groups. It was observed that the goal was not to change the existing Model Law or Legislative Guide, but rather to identify gaps and additional provisions needed to facilitate the effective treatment of cross-border insolvency of multinational enterprise groups.

25. The Working Group agreed to first consider draft articles 3 to 5 dealing with recognition, and draft articles 6 to 8 concerning relief and protection of creditors. Reference was made to paragraph 9 of the working paper and the need to consider the relevance of provisions such as articles 3 to 14 of the Model Law, in particular the disconnection clause in article 3.

Recognition

26. The discussion of draft articles 3 to 5 gave rise to a number of concerns and reservations of a general nature. The first concerned the basis on which proceedings commenced in the originating jurisdiction, whether based on COMI, establishment, or some other criteria. If the recognition regime proposed were restricted to recognizing proceedings from the jurisdiction of the COMI or establishment of a debtor, that situation was already covered by the Model Law and there was no need to add the requirements set out in draft article 3, paragraph 3. However, if the Working Group were seeking to go further as proposed in draft article 3 and to recognize a proceeding commenced on a basis, for example, that it was necessary and integral to an enterprise group solution, a number of issues would need to be considered and the criteria for recognition augmented. It was observed that: a recognition standard based upon what was necessary and integral might be imprecise and lack certainty for creditors; the possibility of having a group solution was a forward-looking standard that did not emerge until after insolvency, while COMI was ascertained on the basis of existing information; and whilst there was only one COMI for each group member, there were multiple possibilities for locating a group solution.

27. There was also a possibility that there could be competing group solutions and it might be appropriate to consider for recognition purposes why the group solution was being sought and which group members were relevant to achieving that solution. The requirement that a group solution "is being developed" or "has been developed" created uncertainty on the basis, for example, that it was unclear what stage of development was required for the purposes of recognition, whether the solution should cover all relevant group members or whether creditors had approved the solution. There was also concern as to how a group insolvency solution might be developed, and in particular, how group members might participate in that development. It was observed that while a solvent entity might participate as envisaged in recommendation 238 of part three of the Legislative Guide, it was not clear how insolvent group members might participate. It was suggested that such participation might occur by providing standing for group members to appear and be heard in the coordinating court without subjecting themselves to the jurisdiction of that court. In such a scenario, it was not intended that participation would equate to commencement of insolvency proceedings.

28. Ensuring the protection of creditors was also a key concern; the solution might in part be provided by draft article 8 and the requirement for adequate protection, although it was also suggested that a standard of "no worse off" might be appropriate. A different view was that the "no worse off" standard was a liquidation test that applied on a territorial basis and should not be applied in a cross-border situation. A related concern was in respect of the consistency of the use of the "no worse off" standard in the work on directors' obligations and in respect of the cross-border insolvency of multinational groups. It was also observed that whilst it may be possible to assess whether an individual group member may be no worse off under a group solution, it would be difficult to assess whether that standard had been met for all members of an enterprise group.

29. As drafted, recognition was mandatory once the requirements of draft article 3 were met, but it was questioned whether there should be some overarching judicial discretion based upon, for example, protection of creditors and other stakeholders or failure to meet the goal of maximization of value or that present harm to local creditors was not outweighed by the potential gains of a group solution as implemented. It was observed that assessing maximization of value could be difficult depending on the type of proceeding (e.g. liquidation or reorganization) and the context in which it was being assessed, i.e. as part of a local proceeding or a global solution.

30. Another issue concerned the role of the court in the context of a group solution. A proposal was made that where proceedings were sought to be commenced in a jurisdiction other than the COMI of the debtor, the COMI court should have a role in approving the commencement of those proceedings. By way of clarification, it was suggested that the draft was not proposing commencement of proceedings in a jurisdiction with no connection to the debtor (see para. 44 of A/CN.9/829), nor was the draft text intended to require a State to cede jurisdiction over a debtor located in its jurisdiction.

31. The Working Group also expressed the following specific views on draft articles 3 to 5 of A/CN.9/WG.V/WP.128.

Article 3. Recognition of a foreign group proceeding

32. The following suggestions were made in respect of article 3. In subparagraph 3(a), a preference was expressed for the phrase "is being developed" rather than "has been developed"; and on subparagraph 3(c), views were expressed supporting both alternatives in square brackets. One view was that, in the absence of the foreign group proceeding emanating from the COMI jurisdiction, the proceedings should be a necessary and integral part of the group insolvency solution. The contrary view was that it was sufficient that the foreign group proceeding be participating in the enterprise group insolvency solution, as it might be difficult for the recognizing judge to determine at that stage whether the foreign proceeding was a necessary or integral part of the group insolvency solution.

33. It was proposed that an additional subparagraph be added to paragraph 3 to ensure that evidence should be adduced of all foreign group proceedings pending for enterprise group members, unless the Working Group was of the view that this requirement was already included in subparagraph 3(a). If that evidentiary requirement were added to subparagraph 3(a), it was noted that it should also be

added to draft article 5, paragraph 4. A further suggestion was made that the substantive elements of paragraph 3 should be moved to draft article 5, paragraph 1.

34. It was suggested that showing a reasonable prospect of implementing a group insolvency solution might prove difficult and that the focus should be on a reasonable prospect of developing a group insolvency solution. It was noted that, in some circumstances, the absence of recognition might prove a barrier to the development or implementation of a group solution.

35. It was further proposed that an additional subparagraph (d) could be added to draft article 3, as follows: "Each group member sought to be represented by the foreign group proceeding has agreed to participate in that proceeding. Where such a group member is subject to insolvency proceedings in the court of its COMI, evidence shall be procured that that court has not prohibited participation of that group member in the foreign group proceeding." That proposal sought to confirm that all group members participating in the group solution had agreed to do so and had not been prohibited from doing so, thereby preserving a role for the COMI court and dealing with one of the concerns raised above.

36. Related proposals concerned revision to the definitions in draft article 2, subparagraphs (h) and (i) to address some of the concerns identified above. It was suggested that draft subparagraph (h) should define "foreign group proceeding" as "a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the enterprise group insolvency solution is being developed and coordinated." In addition, it was suggested that the last sentence of subparagraph (i) defining "enterprise group insolvency solution" should be revised to read: "An enterprise group insolvency solution shall be coordinated through one or more proceeding, each in a State that is the centre of main interests of at least one enterprise group member." The rationale of those revisions was to focus on recognition of the coordinating proceeding; proceedings pending for individual group members could be recognized under the Model Law and no further provisions were required for that purpose. Another proposal was that subparagraphs (h) and (i) of draft article 2 should refer to a proceeding that was in a State that was the COMI of at least one group member and that was a necessary and integral part of the enterprise group insolvency solution. Those proposals received some support.

Article 4. Presumptions concerning recognition

37. If the text were to be developed as an addendum to the Model Law, it was suggested that draft article 4 was not required. It was proposed that the words "or principal place of business" in draft article 4, paragraph 3 be deleted as that notion was inconsistent with the place of central administration mentioned in the Guide to Enactment and Interpretation of the Model Law and there would be no need for preferential treatment of an unincorporated entity.

Article 5. Decisions to recognize a foreign group proceeding

38. It was suggested that subparagraph 1(a) was not required as its content was already reflected in the definition of a foreign group proceeding, and that subparagraph 1(b) was not required for similar reasons. It was suggested that changes in the status of the enterprise group insolvency solution should be added to

the matters listed in paragraph 4. It was noted that draft article 5 did not specify, contrary to article 17 of the Model Law, whether the proceeding was recognized as a main or non-main foreign proceeding. Accordingly, it was suggested that this specification should be made.

39. It was proposed that a new subparagraph should be inserted between subparagraphs 1(a) and (b) of draft article 5 along the following lines, "The foreign group proceeding was commenced on the basis of the centre of main interests or the establishment of the foreign group member or (if permissible under the laws of the enacting State) any other basis, including the presence of assets of the foreign group member or voluntary submission by the foreign group member to the jurisdiction of the court of the foreign State." Some support was expressed in favour of that proposal. Reservations were expressed in respect of the mere presence of assets as an appropriate basis for commencement or recognition.

Summary of discussion on recognition

40. After a lengthy and complex discussion, the Working Group reached several working assumptions with regard to the thinking on the fundamentals of the proposals made and the objections raised. It was reaffirmed that a connection was required between the debtor and the jurisdiction in which insolvency proceedings with respect to that debtor were commenced. In addition, there was agreement that the basic goal of the work was to expand the provisions of the Model Law and the Legislative Guide to provide more solutions for cross-border insolvency of multinational enterprise groups, and that the first goal was to adopt a recognition regime, which would include recognition that a group solution was being sought or developed. It was acknowledged, however, that there were some reservations as to the detail of that regime. The questions of how and when the group solution would be developed were left for further discussion. It was acknowledged that a group solution might be developed in several ways, including informally through foreign representatives, with the participation of other relevant group members, through cooperation and coordination between courts, and through some means, as yet unspecified, of involving creditors.

Relief

41. It was noted that, unlike the Model Law, the draft regime in A/CN.9/WG.V/WP.128 did not provide for mandatory relief upon recognition.

42. In response to various concerns expressed, it was explained that, for the time being, the focus of the relief provisions was on a single group member and not on a number of group members; as to the governing law, the recognizing court would apply the governing law in the same way as under the Model Law. It was also explained that in the text set forth in A/CN.9/WG.V/WP.128, the reference to the group member to which the measures under draft articles 6 and 7 would be applicable was the group member subject to the insolvency proceeding the recognition of which was requested or obtained. The view was expressed that if a group solution could be developed, it would need to be implemented in a decentralized manner and that the treatment of assets and creditors would be in

accordance with the law applicable to those assets and the creditors. It was also confirmed that significant weight would have to be given to creditors to determine what was in their best interests, as reflected in draft article 8. The relief sought in a particular jurisdiction would be subject to the law of that jurisdiction.

Article 6. Relief that may be granted upon application for recognition of a foreign group proceeding

43. It was suggested that draft article 6, subparagraph 1(c) should separate the concepts of administration and reali. ation along the following lines: "Entrusting the administration of all or part of the enterprise group members' assets located in the State to the foreign group member representative or another person designated by the court or their realization in order to protect and preserve ... jeopardy." A related proposal was that the two ideas could be reflected in separate subparagraphs.

Article 7. Relief that may be granted upon recognition of a foreign group proceeding

44. It was proposed that the changes referred to in paragraph 43 above should also be made in respect of subparagraph 1(e) of draft article 7. It was added that some distinction might need to be made between realization of some and of substantially all of the assets of the enterprise group member.

45. To address situations in which it might be problematic for the COMI court requested to commence proceedings to refuse to do so, it was proposed that the following changes should be made to subparagraph 1(a): deletion of "commencement or" and insertion after "continuation" of the following phrase ", or where permitted by relevant procedural laws, the commencement". It was suggested that in some jurisdictions both continuation and commencement might be problematic and that the proposed change should also be made in respect of both continuation and commencement. It was also noted that the same changes should apply to draft article 6, paragraphs 1 and 2 and to draft article 7, subparagraph 1(b).

46. The Working Group noted that it would continue with its consideration of A/CN.9/WG.V/WP.128 at its forty-eighth session. The Secretariat informed the Working Group that it would provide a revised version reflecting the proposals made to amend draft articles 2 to 8.

VI. Cross-border recognition and enforcement of insolvency-related judgements

47. The Working Group commenced its discussion of this topic on the basis of the draft model law on the recognition and enforcement of insolvency-related judgements contained in document A/CN.9/WG.V/WP.130 (draft model law).

Preamble

48. A proposal to make it clear that the adoption of the draft model law would not imply that the Model Law did not permit the enforcement of insolvency-related judgements received some support. It was also suggested that the relationship

between the two instruments could be clarified in the substantive provisions of the draft model law. It was observed that since both instruments were model laws, the question of any overlap between them would have to be addressed by the enacting State.

Article 1. Scope of application

49. Several observations were made in respect of the need to take into consideration existing international and regional instruments, as well as those under development, in order to avoid overlap and to ensure that there were no gaps in terms of the scope of application of the draft model law. The Working Group agreed that these considerations should be borne in mind as the work developed.

50. It was suggested by some that the scope of application as well as the definition of "insolvency-related judgement" be quite open, with few conditions and that grounds to refuse recognition be dealt with in draft article 10. Some reservations were expressed.

51. A number of proposals were made with respect to the drafting of article 1, paragraph 1, including simplifying the current text to read instead: "This Law applies to the recognition and enforcement of an insolvency-related judgement by a foreign representative or other person entitled to seek enforcement of such a judgement." A contrary view was expressed that the scope of application should cover both inbound and outbound requests for recognition and enforcement and that subparagraph 1(b) should thus be retained.

52. Another proposal was to adopt drafting based on article 1, paragraph 1 of the New York Convention, along the following lines: "This Law applies to the recognition and enforcement of insolvency-related judgements ordered in proceedings taking place in a State that is different to the State of execution."

53. The Secretariat was requested to prepare alternative versions of draft article 1 reflecting the above suggestions for future consideration by the Working Group.

Article 2. Definitions

(a) "Foreign proceeding"

54. It was noted that in order to align the draft definition with that contained in the Model Law, the word "foreign" should be inserted before the word "court". In addition, in order to avoid any issues relating to the current status of the foreign proceeding, the words along the lines of those in square brackets should be included and the brackets deleted. There was also a suggestion that a definition of "foreign court" and "proceeding" could be added to the draft model law; it was noted that in the context of the European Insolvency Regulation, the question of whether the court was the insolvency court or another court was not relevant.

(b) "Foreign representative"

55. The Working Group did not have comments on the draft definition in subparagraph (b).

(c) "Judgement"

56. Some support was expressed in favour of requiring a judgement to be final, although it was noted that such an addition would be inconsistent with the reference to provisional measures. It was noted that draft article 10, subparagraph (a) dealt with the question of finality as a ground for refusing recognition. Concern was expressed as to the inclusion of administrative decisions, although it was noted that if such decisions were not included, it could create a gap in some jurisdictions. It was also suggested that the only provisional measures that should be included were protective and conservatory measures.

(d) "Insolvency-related judgement"

57. A suggestion to simplify draft subparagraph (d) included retaining the first sentence and, in the second sentence, deleting the words in the chapeau following "if it has an effect upon the insolvency estate of the debtor" to the end of the third sentence (possibly including the content of the third sentence in a guide to enactment), and adding language to better define the meaning of the word "effect" along the lines of that contained in draft subparagraph (v), variant 1. A different view was that the second sentence of the chapeau of subparagraph (d) should be retained as drafted, with a slight revision to (ii) to delete the words "and legal basis". Another suggestion was to add the substance of footnote 6 either in the text or in a guide to enactment of the draft model law, while an additional proposal was made to emphasize that the list was not exclusive by including the phrase "inter alia" in the final phrase of the chapeau.

58. Various concerns were expressed with respect to some of the matters included in subparagraph (d). It was suggested, for example, that items (vi), (vii), (x) and (xii) were closely related to the question of recognition under the Model Law and should not be included here; and since item (ii) might be based on contract, general rules of enforcement should apply rather than the draft model law. It was observed that a gap might be created by limiting judgements to those issued after commencement, as it would exclude preservation measures granted between application for, and commencement of, insolvency proceedings.

59. No clear preference was expressed in favour of variant 1 or 2 of item (v). Further, a suggestion was made that it could be helpful to add a catch-all paragraph along the lines of "any judgement related to insolvency that is not enforceable under another instrument".

60. A reservation was expressed as to draft item (vi) of subparagraph (d) because it might cause a conflict between the current draft model law and the Model Law. With respect to item (viii), it was suggested that the current drafting might be too narrow, as it would not allow a cause of action to be pursued by a party to whom it had been assigned by, for example, the foreign representative. A reservation was also expressed as to the inclusion of provisional measures.

Articles 3 to 7 and 11 to 12

61. The Working Group had no comments on draft articles 3 to 7 and 11 to 12.
Article 8. Recognition and enforcement of an insolvency-related judgement

62. The Working Group identified some issues for further consideration, including which party could seek recognition and enforcement under an insolvency-related judgement; and the issue of the finality of the judgement in relation to subparagraph 2(b) of the draft article.

63. The following specific drafting proposals were made:

(a) To include the contents of footnote 18 in the text of draft article 8 at the end of paragraph 1 as follows: "Enforcement may be by way of the rights created or recognized by the judgement or order to be pleaded by way of defence.";

(b) To merge paragraph 1 and the chapeau of paragraph 2;

(c) To revise draft subparagraph 2(b) to add words along the lines of "certified statement of the final character of the judgement"; and

(d) To clarify the meanings of "recognition" and "enforcement" in the draft article, as not all judgements required enforcement.

Article 9. Decision to recognize and enforce an insolvency-related judgement

64. A proposal was made to delete subparagraph (a) as redundant. Concern was again expressed as to the relationship between the procedure for recognizing an insolvency-related judgement and the procedure for recognizing foreign proceedings under the Model Law; in particular, it was questioned what would happen to the recognition of an insolvency-related judgement if the underlying insolvency proceedings were found to be manifestly contrary to public policy under the Model Law.

Article 10. Grounds to refuse recognition of an insolvency-related judgement

65. The Working Group recalled its agreement (see paragraph 49 above) to take into consideration existing instruments and those under development in its deliberations on the draft text. It was further recalled that the mandate given to the Working Group was very broad and not constrained by existing mechanisms for recognition and enforcement of insolvency-related judgements, including existing grounds for refusing such recognition and enforcement.

66. A proposal was made to add an additional variant 3 to draft subparagraph (i) along the lines of: "Where the party against whom recognition is sought is the debtor in the proceedings giving rise to the insolvency-related judgement, if such proceedings were not initiated at the debtor's COMI. In all other cases, where the judgement party did not have its COMI in, or where it did not consent to the exercise of the jurisdiction of, the originating State." Although that proposal received some support, serious reservations as to its inclusion were expressed, in particular, that a blanket refusal to recognize on the basis that the insolvency-related judgement did not emanate from the debtor's COMI would be too restrictive to be useful in practice.

67. An additional proposal was made to change subparagraph (h) to read along the following lines: "Recognition of the insolvency-related judgement has been refused by a judgement from the State where the foreign proceeding has been opened, or if no judgement on recognition has been rendered in the State where the foreign proceeding has been opened, the court from which recognition is sought determines

that the insolvency-related judgement is not susceptible to recognition under the laws of the State where the foreign proceeding has been opened."

68. Other suggestions included: the need to add as a ground for refusal a failure to meet the requirements of article 8, paragraph 2; that draft article 10, subparagraphs (f) and (g) should be limited to those circumstances where the prior or earlier judgement had final and binding effect; the need to address the potential overlap between subparagraphs (c), (d) and (e); to add a reference in subparagraph (d) to the content of the insolvency-related judgement being manifestly contrary to public policy; and whether reference should be added to address the treatment of in rem judgements.

69. The Working Group acknowledged that its deliberations at the current session represented a preliminary exchange of views and that all of the proposals made with respect to the draft text would be reflected as additional variants in a future iteration of the text.

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I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a model law on secured transactions (the "draft Model Law"), pursuant to a decision taken by the Commission at its forty-fifth session (New York, 25 June-6 July 2012).[1] At that session, the Commission agreed that, upon its completion of the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "Registry Guide"), the Working Group should undertake work to prepare a simple, short and concise model law on secured transactions based on the general recommendations of the UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide") and consistent with all texts prepared by UNCITRAL on secured transactions, including the United Nations Convention on the Assignment of Receivables in International Trade (the "Assignment Convention"), the Supplement on Security Rights in Intellectual Property (the "Intellectual Property Supplement") and the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "Registry Guide").[2]

2. At its twenty-third session (New York, 8-12 April 2013), the Working Group had a general exchange of views on the basis of a note prepared by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.55 and Add.1 to 4).

3. At its forty-sixth session (Vienna, 8-26 July 2013), the Commission agreed that the preparation of the draft Model Law was an extremely important project to complement the work of the Commission in the area of security interests and provide urgently needed guidance to States as to how to implement the recommendations of the Secured Transactions Guide. It was also agreed that, in view of the importance of modern secured transactions law for the availability and the cost of credit, and the importance of credit for economic development, such guidance was extremely important and urgent to all States at a time of economic crisis but in particular to States with developing economies and economies in transition. In addition, it was stated that the scope of the draft Model Law should include all economically valuable assets.[3] After discussion, the Commission confirmed the mandate it had given to Working Group VI in 2012 (see para. 1 above).[4] The Commission also agreed that whether that work would include security interests in non-intermediated securities would be assessed at a future time.[5]

4. At its twenty-fourth session (Vienna, 2-6 December 2013), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.57 and Add.1 and 2) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (A/CN.9/796, para. 11). At its twenty-fifth session (New York, 31 March-4 April 2014), the Working Group continued its work based on a note by the Secretariat entitled "Draft Model Law on Secured Transactions"

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[1] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 105.

[2] Ibid.

[3] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 193.

[4] Ibid., para. 194.

[5] Ibid., para. 332.

(A/CN.9/WG.VI/WP.57/Add.2-4 and A/CN.9/WG.VI/WP.59 and Add.1) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/802, para. 11). The Working Group also decided to recommend to the Commission that the draft Model Law address security rights in non-intermediated securities along the lines agreed upon by the Working Group at that session (see A/CN.9/802, para. 93).

5. At its forty-seventh session (New York, 7-18 July 2014), the Commission expressed its satisfaction for the considerable progress achieved by the Working Group in its work and requested the Working Group to expedite its work so as to complete the draft Model Law, including certain definitions and provisions on non-intermediated securities, and to submit it to the Commission for adoption together with a guide to enactment as soon as possible.[6]

6. At its twenty-sixth session (Vienna, 8-12 December 2014), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.61 and Add.1-4) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/830, para. 12).

II. Organization of the session

7. The Working Group, which was composed of all States members of the Commission, held its twenty-seventh session in New York from 20 to 24 April 2015. The session was attended by representatives of the following States members of the Working Group: Algeria, Armenia, Austria, Belarus, Brazil, Cameroon, Canada, China, Ecuador, France, Gabon, India, Israel, Italy, Japan, Kenya, Malaysia, Pakistan, Panama, Paraguay, Philippines, Republic of Korea, Russian Federation, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda and United States of America.

8. The session was attended by observers from the following States: Ethiopia, Haiti, Libya, Romania and Trinidad and Tobago. The session was also attended by observers from the Holy Sea and the European Union.

9. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: World Bank and World Intellectual Property Organization (WIPO);

(b) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Asociación Americana de Derecho Internacional Privado (ASADIP), Commercial Finance Association (CFA), European Federation for Factoring and Commercial Finance (EUF), European Law Students' Association (ELSA), Factors Chain International (FCI), International Factors Group (IFG), International Insolvency Institute (III), Moot Alumni Association (MAA), National Law Centre for Inter-American Free Trade (NLCIFT) and New York City Bar (NYCBAR).

[6] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 163.

10. The Working Group elected the following officers:

Chairperson: Ms. Kathryn SABO (Canada)

Rapporteur: Mr. Hiroo SONO (Japan)

11. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.62 (Annotated Provisional Agenda) and A/CN.9/WG.VI/WP.63 and Add.1-4 (Draft Model Law on Secured Transactions).

12. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Draft Model Law on Secured Transactions.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

13. The Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.63/Add.1, 2 and 4). The deliberations and decisions of the Working Group are set forth below in chapter IV. The Secretariat was requested to revise the draft Model Law to reflect the deliberations and decisions of the Working Group.

IV. Draft Model Law on Secured Transactions

A. Chapter VI. Rights and obligations of the parties and third-party obligors (A/CN.9/WG.VI/WP.63/Add.2)

Article 61. Source of rights and obligations of the parties

14. Differing views were expressed as to whether article 61 should be retained or deleted. One view was that it should be deleted as it dealt with matters that were typically addressed in contract law and, in any case, could be discussed in the draft Guide to Enactment. Another view was that article 61 should be retained, in particular, to give legislative strength to usages agreed upon by the parties and trade practices established between them that might not be generally recognized in all jurisdictions. After discussion, the Working Group decided that article 61 should be retained.

15. The Working Group next turned to the formulation of article 61. A number of suggestions were made. One suggestion was that the secured transactions law based on the draft Model Law should be added to the list of sources of the mutual rights and obligations of the parties in article 61. It was noted, however, that only chapter VI, section I of the draft Model Law dealt with the contractual rights and obligations of the parties to a security agreement. It was also noted that for those

rights it would be more appropriate to refer to contractual law. Another suggestion was that subparagraph 1(b) should make it clear that agreements with respect to trade usages did not need to be explicit but could also be implicit (see art. 9(2) CISG). It was noted, however, that that did not need to be addressed in the draft Model Law, as it was a typical matter of contract law, which the Secured Transactions Guide did not address. Yet another suggestion was that subparagraph 1(b) should refer to the right of the parties to agree otherwise. It was noted, however, that, by not listing article 61 as a mandatory law rule, article 4 was sufficient in providing that parties could agree otherwise. After discussion, the Working Group agreed that, while the formulation of article 61 could be improved, all those matters could usefully be discussed in the draft Guide to Enactment. Subject to those changes, the Working Group approved the substance of article 61.

Article 62. Obligation of a person in possession to preserve an encumbered asset

16. With respect to article 62, the Working Group agreed that: (a) the obligation to preserve an encumbered asset should be placed on both the grantor and the secured creditor in possession; (b) reference should be made to the obligation of the person in possession to "exercise reasonable care" rather than to "take reasonable steps"; and (c) the reference to the preservation of "the asset and its value" should be revised to take into account the meaning of this wording in the Secured Transactions Guide and in particular that, in many cases, the preservation of the asset would also result in the preservation of its value. Subject to those changes, the Working Group approved the substance of article 62.

17. With respect to the question whether the obligation in article 62 should also be placed on third parties in possession, it was agreed that it did not need to be addressed in article 62 but could be discussed in the draft Guide to Enactment as: (a) such an obligation could be placed on third parties only with their consent; and (b) if a third party agreed, such an agreement would be enforceable under contractual law.

18. With respect to certificated non-intermediated securities, it was agreed that the draft Guide to Enactment should explain that the obligation to preserve their value could be challenging for the person in possession, since that person might not be in control of their value, which may fluctuate according to market conditions. In addition, the Guide to Enactment should clarify that a rule of securities law along the lines of article 5(1) of the Financial Collateral Directive giving a secured creditor a right to use certificated non-intermediated securities and the rule in article 62 should be read together and their relationship would be a matter for domestic rules of interpretation.

Article 63. Obligation of a secured creditor to return an encumbered asset or to register a cancellation notice

19. The Working Group noted that article 63 dealt with the following three different issues: (a) the extinction of a security right upon full satisfaction of all secured obligations; (b) the obligation of the secured creditor to return the encumbered asset upon extinction of the security right by full satisfaction of all secured obligations or otherwise (e.g. by the statute of limitations); and (c) the obligation of the secured creditor to register a cancellation notice upon extinction of a security right, which was also addressed in article 39, subparagraph 1(d).

20. Despite some initial doubt, the Working Group agreed that, while the extinction of a security right upon full satisfaction of all secured obligations was a matter that should be addressed in the draft Model Law, the extinction of the secured obligation was a contractual matter that should be left to contractual law. As to the placement of the provision that would deal with the extinction of a security right upon full satisfaction of all secured obligations, the Working Group agreed that, as it was not a matter relating to the rights and obligations of the parties to the security agreement but rather to the termination of a security right, it should be placed at the end of chapter II (creation) within square brackets for further consideration by the Working Group.

21. With regard to the obligation of the secured creditor to return the encumbered asset upon extinction of the security right by full satisfaction of all secured obligations or otherwise, the Working Group agreed that it should be addressed in article 63 with wording that would be more in line with article 39, subparagraph 1(d), of the draft Model Law and recommendation 112 of the Secured Transactions Guide (the encumbered asset should not necessarily be returned to the grantor as the parties might have agreed otherwise).

22. With regard to the obligation of the secured creditor to register a cancellation notice upon extinction of a security right by full satisfaction of all secured obligations or otherwise, it was agreed that the relevant wording should be retained in article 63 within square brackets for further consideration of the question whether the issue should be addressed only in article 63, only in article 39, subparagraph 1(d) or in both articles.

23. Subject to the above-mentioned changes, the Working Group approved the substance of article 63 and the new article to be placed at the end of chapter II (creation).

24. The Working Group also agreed that the Guide to Enactment should clarify that: (a) article 63 did not need to address the obligation of an assignee to withdraw the notification to the debtor of the receivable as the obligation of the secured creditor to return any surplus was sufficient to address that matter (see arts. 67, para. 2, and 90, 1(c)); (b) article 63 was not relevant to outright transfers of receivables as the term "secured obligation" did not apply to outright transfers of receivables (see art. 2, subpara. (ee)), and receivables could not be subject to actual (physical) possession (see art. 2, subpara. (z)); and (c) whether the secured creditor could return equivalent non-intermediated securities (see art. 5(2) of the Financial Collateral Directive) was a matter left to securities law.

Article 64. Rights of a secured creditor with respect to an encumbered asset

25. With respect to article 64, it was agreed that subparagraph 1(a) should be aligned with article 62 to refer to the preservation of not only the "asset" but also of "its value" (see para. 16 above). It was also suggested that subparagraphs 1(b) and 1(c) should be aligned with recommendation 113, subparagraph (b), of the Secured Transactions Guide, which combined the two elements and made reference to "revenues generated", rather than to "monetary proceeds". In that connection, a note of caution was struck, as: (a) unlike the term "proceeds" (see art. 2, subpara. (bb)), the term "revenues" was not a defined term; and (b) the term "revenues" could be

understood in a broad sense (to include, for example, revenues generated through sales of goods produced using encumbered machinery).

26. It was also agreed that both sets of bracketed text in paragraph 2 should be deleted as the obligation of the parties to exercise their rights and perform their obligations in good faith and in a commercially reasonable manner was already addressed in article 5 (general standards of conduct). While a suggestion was made that the word "reasonable" in subparagraph 1(b) could also be deleted for the same reason, it was widely felt that there was a need to retain that word which qualified the manner in which the asset was to be used.

27. Subject to the above-mentioned changes, the Working Group approved the substance of article 64.

Article 65. Representations of the grantor

28. With respect to article 65, the Working Group agreed that, unlike recommendation 114 of the Secured Transactions Guide on which it was based, it should apply to all types of receivables, since representations of the kind addressed in article 65 could be given with respect to any type of receivable, whether contractual or not. With respect to subparagraphs 1(a) and 1(b), it was suggested that, as they set out rules applicable to all types of asset, they should be either moved to the general rules or deleted and the matters addressed therein left to contractual law. While there was support for the deletion of subparagraph 1(a), there was no sufficient support for the deletion of subparagraph 1(b) as it reflected a type of representation that was particularly important for receivables financing transactions. After discussion, the Working Group agreed to delete subparagraph 1(a) but retain the remaining part of article 65. The Working Group also agreed that the Guide to Enactment should explain that the deletion of subparagraph 1(a) was not a policy change but rather an effort to avoid giving the impression that the representation in subparagraph 1(a) was not relevant for types of asset other than receivables and to defer in that regard to contractual law. Subject to those changes, the Working Group approved the substance of article 65.

Article 66. Right of the grantor or the secured creditor to notify the debtor of the receivable

29. The Working Group agreed that article 66 and other articles in the draft Model Law should reflect the general rule that receipt by the debtor of the receivable would be required for a notification to be effective. As a matter of drafting, it was thus suggested that reference should be made to the notification being "received by" or "given to" the debtor of the receivable. The Working Group also agreed that paragraph 2 should be revised to clarify what was the agreement to which it referred (see rec. 115 of the Secured Transactions Guide). Subject to those changes, the Working Group approved the substance of article 66.

Article 67. Right of the secured creditor to payment

30. It was suggested that the heading of article 67 should make it clear that the article dealt only with receivables. Subject to that change and the changes necessary to reflect the receipt rule (see para. 29 above), the Working Group approved the substance of article 67.

Article 68. Right of the secured creditor to preserve encumbered intellectual property

31. The Working Group approved the substance of article 68 unchanged.

Article 69. Protection of the debtor of the receivable

32. The Working Group approved the substance of article 69 unchanged.

Article 70. Notification of the security right in a receivable

33. The Working Group agreed that article 70 should be revised to avoid restating the receipt rule set out in article 66 (see para. 29 above). Subject to that change, the Working Group approved the substance of article 70.

Article 71. Discharge of the debtor of the receivable by payment

34. The Working Group approved the substance of article 71 unchanged.

Article 72. Defences and rights of set-off of the debtor of the receivable

35. The Working Group agreed that subparagraph 1(a) should be revised to make it clear that it applied only to contractual receivables. Subject to that change, the Working Group approved the substance of article 72.

Article 73. Agreement not to raise defences or rights of set-off

36. The Working Group agreed that the bracketed text in paragraph 2 should be retained outside square brackets to conform article 73 more closely to recommendation 121, subparagraph (c), of the Secured Transactions Guide. As a matter of drafting, it was suggested that that result might be better achieved by language along the following lines: "the agreement ... may be modified only by an agreement in a writing signed by the debtor of the receivable in accordance with article 74, paragraph 2" or "the agreement ... may be modified only by an agreement in a writing signed by the debtor of the receivable and its effectiveness against the secured creditor is determined by article 74, paragraph 2". Subject to that change, the Working Group approved the substance of article 73.

Article 74. Modification of the original contract

37. The Working Group approved the substance of article 74 unchanged.

Article 75. Recovery of payments made by the debtor of the receivable

38. The Working Group agreed that article 75, paragraph 1, should clarify that, where a receivable was transferred from the original creditor to another person and a security right was created by that transferee, it would apply in the case of failure of the transferor (rather than the grantor) to perform the contract giving rise to the receivable. The Working Group also agreed that paragraph 2 should be deleted as it was unnecessary (paragraph 1 did not affect the rights of the debtor of the receivable against the grantor) and was not included in recommendation 123 of the Secured Transactions Guide, on which article 75 was based. Subject to those changes, the Working Group adopted the substance of article 75.

Article 76. Rights as against the obligor under a negotiable instrument

39. With respect to article 76, it was agreed that the words "subject to" should be replaced with words along the lines of "determined by", to clarify the policy of the draft Model Law to defer in that regard to other law. It was agreed that the same change should be made to articles 78, 79 and where appropriate in the draft Model Law. Subject to that change, the Working Group adopted the substance of article 76.

Article 77. Rights and obligations of the depositary bank

40. The Working Group approved the substance of article 77 unchanged.

Article 78. Rights as against the issuer of a negotiable document

41. Subject to the change agreed upon in the context of the discussion of article 76 (see para. 39 above), the Working Group adopted the substance of article 78.

Article 79. Rights as against the issuer of a non-intermediated security

42. Subject to the change agreed upon in the context of the discussion of article 76 (see para. 39 above), the Working Group approved the substance of article 79.

B. Chapter VII. Enforcement of a security right (A/CN.9/WG.VI/WP.63/Add.2)

Article 80. Post-default rights

43. It was noted that article 80 set out a catalogue of the rights of the grantor and the secured creditor in the case of default, which, with the exception of the rights in subparagraphs 1(d) and 2(e), and paragraphs 2 and 3, were then reflected in other provisions of chapter VII. Differing views were expressed as to whether such a catalogue should be retained. One view was that it should be retained, as it was helpful to the reader, but, for that purpose, it should be revised to be more complete and accurate. The prevailing view, however, was that such a catalogue should be deleted. It was stated that, while appropriate for a legislative guide, such a catalogue did not belong in a model law. It was also observed that duplication was unnecessary and could even be harmful, as it was likely to result in inconsistencies and confusion. After discussion, the Working Group agreed that article 80 should be revised to refer only to the rights in in subparagraphs 1(d) and 2(e), and the rules in paragraphs 3 and 4.

44. The Working Group next considered the question whether some of the grantor's remedies set out in paragraph 1 should be available to the grantor even before default and be dealt with in chapter VI, Section I, of the draft Model Law. The Working Group agreed that, for example, the right of redemption and the right to apply to a court or other authority for relief should indeed be available to the grantor even before default. However, in line with its approach to set out some basic provisions with regard to the pre-default contractual rights of the parties, the Working Group agreed that those rights should be left to the relevant contractual law, and the matter usefully explained in the draft Guide to Enactment.

45. The Working Group then turned to the question whether, in the case of a security right in all assets of a grantor, the secured creditor could dispose of the business as a going concern. It was agreed that, depending on what was commercially reasonable, the secured creditor should be able to decide whether to dispose of the encumbered assets individually, in groups or as a whole. It was also agreed that the sale of the encumbered assets as a whole might have the effect of a sale of a business as a going concern, but it did not really amount to a sale of a business as a going concern as the business was not an encumbered asset. It was further agreed that, in any case, that terminology should be avoided as it could create confusion and interfere with insolvency and receivership law. It was suggested that the matter might be addressed in article 88, paragraph 2, or discussed in the draft Guide to Enactment.

46. Subject to the aforementioned changes, the Working Group approved the substance of article 80.

Article 81. Waiver of post-default rights

47. The Working Group agreed that article 81 should clarify that the default referred to in paragraph 1 meant the default on the secured obligation, whether it was owed by the grantor or any other party. As a matter of drafting, it was suggested that it would be sufficient to clarify the matter in the first article dealing with enforcement. The Working Group also agreed that paragraph 2 should be deleted, as its substance was already captured by article 4 on party autonomy. It was also suggested that article 81 could be merged with article 80. Subject to those changes, the Working Group approved the substance of article 81.

Article 82. Judicial and extrajudicial methods of exercising post-default rights

48. The Working Group first considered a suggestion that alternative dispute resolution ("ADR") mechanisms, such as conciliation and arbitration, should be listed as methods for exercising post-default rights in article 82. In support of that suggestion, it was stated that, by referring only to judicial and extrajudicial proceedings, rather than to exercising those rights by applying or without applying to court or other authority, as did recommendation 142 of the Secured Transactions Guide, article 82 appeared to preclude ADR as a method of enforcement of post-default rights. In addition, it was observed that the fact that only the note to article 83, which dealt with judicial or other official relief by the grantor for non-compliance by the secured creditor, made reference to ADR reinforced the impression that ADR was not available as a method for exercising post-default rights under article 82. Moreover, it was pointed out that, in line with the Secured Transactions Guide, the draft Model Law made reference in the context of its chapter on transition to the fact that disputes with regard to post-default rights of the parties could be resolved by way of judicial or arbitral proceedings (see rec. 229 and art. 113, subpara. (a)). It was also mentioned that the resolution of such disputes by ADR was generally recognized in international instruments, such as the World Bank Toolkit on Secured Transactions and the OAS Model Law on Secured Transactions, as well as in secured transactions laws recently enacted in Latin America.

49. While there was agreement in the Working Group as to the importance of ADR methods, doubt was expressed as to whether the draft Model Law should specifically refer to ADR in the context of enforcement. It was stated that there was

nothing in articles 82 or 83 that precluded parties from agreeing to resolve a dispute arising in the context of the exercise of a post-default right by an ADR method. In addition, it was observed that the draft Model Law should not attempt to address the potentially complex issues arising in the context of the exercise of post-default rights, such as repossession and disposition of encumbered assets. Moreover, it was pointed out that the disputes that could arise in the context of article 82 were not of the same magnitude as the disputes that could arise in the context of article 83, as the former could involve the rights of third parties, while the latter would typically involve a bilateral dispute between the grantor and the secured creditor. It was also noted that consideration of the matter would require coordination with other working groups, such as Working Group II (Arbitration and Conciliation), a matter that would have to be addressed by the Commission.

50. After discussion, the Working Group agreed that the matter should be considered at a future session on the basis of a detailed proposal.

51. With respect to article 82, the Working Group agreed that it should be aligned more closely with recommendation 142 of the Secured Transactions Guide to refer to the right of the secured creditor to exercise its post-default rights with or without applying to a court or other authority. In addition, it was agreed that the reference to "court or other authority" should be within square brackets followed by the words "to be specified by the enacting State", thus leaving it to each enacting State to determine the relevant court or other authority (e.g. a chamber of commerce). Moreover, it was agreed that, in paragraph 2, reference should be made to "the rules to be specified by the enacting State" as those rules might not necessarily be civil procedure rules (e.g. administrative rules with respect to proceedings before an authority other than a court). It was further agreed that, in paragraph 3: (a) the reference to article 5 should be deleted, as the general standard of conduct applied to the exercise of any right under the draft Model Law, including the right to exercise post-default rights without applying to a court or other authority (but not the right to apply to a court or other authority, which was typically enshrined in procedural and constitutional law rules); and (b) the reference to articles 87-90 should be replaced by a reference to the "provisions of this chapter", as the secured creditor could exercise post-default rights without having to apply to a court or other authority on the basis other provisions of chapter VII (e.g. article 91 dealing with the acquisition of the encumbered asset in total or partial satisfaction of the secured obligation).

52. In that connection, the suggestion was made that article 82 should be revised to state that the post-default rights that the secured creditor could exercise by applying to a court or other authority were limited to the right to obtain possession and the right to dispose of the encumbered asset. It was stated that all other post-default rights (including acquisition of an encumbered asset in total or partial satisfaction of the secured obligation and collection) could not be exercised before a court or other authority. That suggestion was objected to. It was stated that, in some jurisdictions, collection of a receivable or under a negotiable instrument might require a court order. In addition, it was observed that there might be other post-default rights that could be exercised before a court or other authority (e.g. appointment of a receiver). Moreover, it was pointed out that, even if a post-default right could only be exercised without an application to a court or other authority, there was no reason to preclude the grantor or the secured creditor from

seeking the assistance of a court or other authority to resolve a dispute that might arise with respect to the exercise of that post-default right. It was also mentioned that, in any case, the draft Model Law should not attempt to harmonize national enforcement rules and thus potentially become less acceptable to States. After discussion, it was agreed that, while some post-default rights could be exercised only without an application to a court or other authority, the draft Model Law should not limit the ability of the parties to avail themselves of the assistance of a court or other authority to exercise a post-default right or resolve disputes arising in that respect.

53. Subject to the above-mentioned changes, the Working Group approved the substance of article 82.

Article 83. Judicial or other official relief of the grantor for non-compliance by the secured creditor

54. Recalling its decision with respect to article 82 (see para. 51 above), the Working Group agreed that article 83 should be revised to refer to the exercise of post-default rights without an application to a court or other authority. In addition, it was agreed that article 83 should be revised to more closely reflect recommendations 137 and 138 of the Secured Transactions Guide and provide the possibility for all parties to obtain relief, including relief by way of expedited proceedings before a court or other authority. Moreover, it was agreed that the term "any other interested person", which was said to be vague and inappropriate for a legislative text, should be retained within square brackets along with the term "competing claimant", which was defined in the draft Model Law (see art. 2, subpara. (e)) for further consideration by the Working Group. It was also agreed that reference should be made to the enforcement of a security right "in accordance with the provisions of this chapter" (and not only article 82). It was further agreed that the Guide to Enactment should: (a) include a discussion of relief offered by an arbitral tribunal or conciliator along the lines of the discussion in the note to the Working Group following article 83; and (b) clarify that a violation of the secured creditor's obligations, included violations by the secured creditor's agents, employees or service providers. Subject to those changes, the Working Group approved the substance of article 83.

Article 84. Grantor's right of redemption

55. With respect to article 84 and its heading, the Working Group agreed that neutral terminology should be used, as the term "redemption" was used in some jurisdictions and only with respect to loans secured by mortgages. As a matter of drafting, the suggestion was made that reference could instead be made to the grantor's right to terminate the enforcement process (for the extinction of the security right by full payment of all secured obligations, see para. 20 above).

56. With respect to paragraph 1, the Working Group agreed that reference should be made to the "reasonable" cost of enforcement. In that connection, it was agreed that the draft Guide to Enactment should clarify that: (a) in the case of enforcement before a court or other authority, the court or other authority would set the cost of enforcement based on evidence; and (b) in the case of enforcement without an application to a court or other authority, the grantor could seek the assistance of a

court or other authority if it were to disputer the reasonableness of the cost of enforcement.

57. With respect to paragraph 2, the Working Group agreed that it should clarify that it referred to a "post-default" agreement of the secured creditor to dispose of the encumbered asset. It was also agreed that language should be included in paragraph 2 within square brackets to ensure that, even after the encumbered asset was leased or licensed, the grantor could pay the secured obligation and obtain the encumbered asset free of the security right, subject to the rights of the lessee or licensee.

58. Subject to the above-mentioned changes, the Working Group approved the substance of article 84.

Article 85. Right of higher-ranking secured creditor to take over enforcement

59. With respect to article 85, the Working Group agreed that it should be aligned more closely with recommendation 145 of the Secured Transactions Guide to refer to the right of a higher-ranking secured creditor to take over enforcement initiated by another secured creditor or a judgement creditor. It was also agreed that paragraph 2 should be retained to reflect the right of the higher-ranking secured creditor to continue the enforcement proceedings initiated by another creditor or terminate them and initiate new proceedings. In that connection, it was agreed that the draft Guide to Enactment should clarify that, in determining whether to continue or terminate the enforcement proceedings, the secured creditor should: (a) have the right, for example, to correct mistakes of the enforcing creditor; and (b) be obliged to act in a commercially reasonable manner, for example, to avoid unnecessary enforcement costs. Subject to those changes, the Working Group approved the substance of article 85.

Article 86. Secured creditor's right to possession

60. At the outset, the Working Group agreed that article 86 should apply to all types of tangible asset referred to in the definition contained in article 2, subparagraph (kk), of the draft Model Law. It was also agreed that article 86 should be revised to provide that, after default, the secured creditor was entitled to obtain possession of an encumbered asset by applying to a court or other authority or in accordance with article 87. It was also agreed that the draft Guide to Enactment should clarify that the mere fact that the grantor had defaulted on the secured obligation did not give to the secured creditor a right to obtain possession of the asset from a person that obtained its rights in the asset free of the security right (e.g. a lessee or licensee).

61. Differing views were expressed as to whether a lower-ranking secured creditor should be entitled to obtain possession of an encumbered asset from a higher-ranking secured creditor. One view was that the lower-ranking secured creditor should have that right. Otherwise, it was stated, a higher-ranking secured creditor in possession without an interest to enforce its security right could delay or preclude enforcement. Another view was that the lower-ranking secured creditor should not have the right to obtain possession of the encumbered asset from the higher-ranking secured creditor. It was stated that, if the higher-ranking secured creditor relinquished possession, its security right might cease to be effective

against third parties and lose its priority status. It was also observed that, if the encumbered asset was disposed of by the lower-ranking secured creditor, it could diminish in value. After discussion, the Working Group requested the Secretariat to prepare options for consideration by the Working Group at a future session.

62. Subject to the above-mentioned changes, the Working Group approved the substance of article 86.

Article 87. Extrajudicial repossession of encumbered assets

63. Recalling its decision with respect to article 66 (see para. 29 above), the Working Group agreed that article 87 should be revised to reflect the receipt rule.

64. With respect to subparagraph 1(b), the Working Group agreed that the first bracketed text (which mirrored the definition of the term "debtor" in art. 2, subpara. (h) of the draft Model Law) should be deleted, as it was sufficient for the secured creditor to give notice of default to the grantor and any person in possession of the encumbered asset. It was also agreed that no example should be given of a short period of time within which notice should be given, as the length of a "short notice" could differ from State to State.

65. With respect to subparagraph 1(c), the Working Group agreed that the words "at the time the secured creditor seeks to obtain possession" should be revised to clearly refer to the time when the secured creditor attempted to obtain actual (physical) possession of the encumbered asset and not when the secured creditor "declared its intent" to that effect, which was a matter already dealt with in subparagraph 1(b).

66. With respect to paragraph 2, the Working Group agreed that it should be retained outside square brackets to refer to instances where the value of the encumbered asset was likely to diminish quickly and, therefore, no notice would be required of the secured creditor. In that connection, it was also agreed that the reference to encumbered assets being of a kind sold on the recognized market should be deleted, as it was too broad and could thus include any type of asset.

67. Subject to those changes, the Working Group approved the substance of article 87.

Article 88. Extrajudicial disposition of encumbered assets

68. Recalling its decision to delete article 80, subparagraphs 2(b) and 2(c) (see, para. 43 above), the Working Group agreed that article 88 should be revised to provide that, in the case of a security right in all assets of the grantor, the secured creditor would be free to decide whether to dispose of the encumbered assets individually, in groups or as a whole, as long as it acted in a commercially reasonable manner (see para. 45 above). In that connection, it was agreed that the reference in paragraph 2 to article 5 was unnecessary and should be deleted, as it was understood that article 5 was a general standard that applied to the entire draft Model Law. It was also agreed that the draft Guide to Enactment should highlight the flexibility provided to the secured creditor in disposing of the encumbered assets by public or private sale, and if by public sale, through auction or tender. Subject to those changes, the Working Group approved the substance of article 88.

Article 89. Advance notice of extrajudicial disposition of encumbered assets

69. Recalling its decision with respect to article 66 (see para. 29 above), the Working Group agreed that article 89 should be revised to reflect the receipt rule. Also recalling its decision with respect to article 87 (see para. 64 above), the Working Group agreed that no example should be given of a short period of time within which notice should be given. Also recalling its decision with respect to article 83, the Working Group agreed that the term "any person with rights in the encumbered asset" should be placed within square brackets along with the term "competing claimant" for the Working Group to consider the matter at a future session.

70. With respect to paragraph 1, it was agreed that it should be revised to clarify that the secured creditor had to give notice to the grantor if, after default, the secured creditor had decided to dispose of the encumbered asset without applying to a court or other authority. However, a suggestion to clarify that matter further by merging article 89 with article 88 did not receive sufficient support.

71. With respect to paragraph 3, it was agreed that reference should be made to "a reasonable estimate of the cost of enforcement" as it would be impossible for the secured creditor to come up with an accurate cost of enforcement at the time when it would give notice. It was further agreed that the content of recommendation 150 of the Secured Transactions Guide, which was relevant to article 89, should be discussed in the draft Guide to Enactment.

72. Subject to the above-mentioned changes, the Working Group approved the substance of article 89.

Article 90. Distribution of proceeds of disposition of encumbered assets

73. At the outset, the Working Group agreed that article 90 should not apply to outright transfers of receivables (see art. 1, para. 2, of the draft Model Law). In addition, it was agreed that the words "in accordance with generally applicable procedural rules" in subparagraph 1(c) should be deleted, as other law would apply anyway. Moreover, it was agreed that no new article should be included in the draft Model Law to deal with damages for non-compliance with enforcement obligations along the lines of recommendation of 136 of the Secured Transactions Guide, as that was a matter for other law. It was agreed, however, that the matter could be discussed in the draft Guide to Enactment, in particular in relation to consumer transactions. Subject to those changes, the Working Group approved the substance of article 90.

Article 91. Acquisition of encumbered assets in satisfaction of the secured obligation

74. With respect to article 91, the Working Group agreed that: (a) the words "and any other person that owes payment or other performance of the secured obligation, including a guarantor" in subparagraph 2(a) should be deleted, as the term "debtor" was sufficient to encompass that person; (b) the article should be revised to reflect the receipt rule and use neutral terminology, rather than refer to redemption (see, para. 29 and para. 55 above); (c) paragraphs 4 and 5 should state the rule that the secured creditor should be deemed to have acquired the encumbered asset (in para. 4, unless one of the addressees of the notice objects and in para. 5, if each

addressee gave its affirmative consent within the relevant time period). Subject to those changes, the Working Group approved the substance of article 91.

Article 92. Rights acquired through judicial disposition of encumbered assets

75. Recalling its earlier decision with respect to article 82 (see, para. 51 above), the Working Group agreed that reference should be made to disposition before a court or other authority. It was also agreed that article 92 should be revised to deal in one paragraph with the question whether a buyer or other transferee of an encumbered asset in the context of enforcement of a security right would take the asset free of any rights of the grantor and any competing claimant and in another paragraph with the same question with regard to lessees and licencees of an encumbered asset. In that connection, it was agreed that the latter paragraph should read along the lines of article 93, paragraph 2. Subject to those changes, the Working Group approved the substance of article 92.

Article 93. Rights acquired through extrajudicial disposition of encumbered assets

76. With respect to paragraph 1, the Working Group agreed that it should be revised to provide explicitly that the transferee of encumbered assets in an out-of-court (or other authority) disposition acquired the grantor's right in the encumbered asset free of the rights of the secured creditor and any competing claimant with a lower-ranking right, but subject to the rights that have priority over the security right of the enforcing secured creditor. With respect to paragraph 3, it was agreed that reference should be made in that regard to knowledge of a violation that materially prejudiced the rights of the grantor (within square brackets), but was not necessarily the result of reckless behaviour. Subject to those changes, the Working Group approved the substance of article 93.

Article 94. Collection of payment under a receivable, negotiable instrument, right to payment of funds credited to a bank or non-intermediated security

77. The Working Group noted that the word "also" in paragraph 1 was intended to ensure that the secured creditor could collect a receivable under article 94 but also, for example, sell it under article 88. It was stated, however, that that word could inadvertently give the impression that not only the secured creditor but also the grantor were entitled to collect the receivable. Thus, the Working Group agreed to delete the word "also" in paragraph 1.

78. With respect to outright transfers of receivables, the Working Group agreed that: (a) article 1, paragraph 2, should be revised to provide that articles 80-93, but also 94, did not apply to outright transfers of receivables; and (b) a new article should be prepared to deal with that matter. In that connection, it was agreed that, in line with recommendation 167 of the Secured Transactions Guide, the new article should provide that: (a) the secured creditor (transferee) was entitled to collect the receivable whether the grantor (transferor) had defaulted or not; and (b) the standard of good faith and commercial reasonableness (art. 5) did not apply to an outright transfer without recourse as the grantor (transferor) had no remaining vested interest in the receivable that could be protected by a limitation on the way in which the secured creditor (transferee) could collect the receivable.

79. The Working Group noted that, unless specifically regulated and the grantor's right to due process sufficiently protected, out-of-court collection might run counter to constitutional guarantees of due process. However, the Working Group agreed that the conditions for the secured creditor to obtain possession without applying to a court or other authority did not apply to the out-of-court collection of a receivable. It was stated that, for example, advance notice was required when the secured creditor wanted to obtain possession of an encumbered asset without applying to a court or other authority to avoid a breach of peace and to ensure that a disposition would produce good value, matters that would not arise in the case of out-of-court collection of receivables. In addition, it was observed that, if the secured creditor (transferee), acting in a commercially unreasonable manner, collected less than what was owed from the debtor of the receivable, the grantor (transferor) would be protected and the secured creditor (transferee) would be liable for damages. Moreover, it was pointed out that that approach was consistent with the Assignment Convention and the Secured Transactions Guide.

80. Subject to the above-mentioned changes, the Working Group approved the substance of article 94.

C. Chapter IV. Registration of a notice with respect to a security right (A/CN.9/WG.VI/WP.63/Add.1)

81. To reflect the content of chapter IV more accurately, the Working Group agreed that its heading should be revised to read along the following lines: "Registry system".

Article 26. Establishment of the general security rights registry

82. With respect to article 26, the Working Group agreed that the registry should be established by the secured transactions law, so that the enactment of the law and the establishment of the registry would be coordinated. It was widely felt that that would not necessarily result in undue delays as the effective date of the law would be deferred to a time when a State would be prepared to set up the registry. Subject to that change, the Working Group approved the substance of article 26.

Article 27. Public access to registry services

83. The Working Group agreed that paragraph 1 should be deleted, as paragraph 2 was sufficient to state the principle of public access to registry services. Subject to that change, the Working Group approved the substance of article 27.

Article 28. Grantor's authorization for registration

84. At the outset, the Working Group noted that, while grantor authorization was required for a registration to be effective, it could be given before or after registration and its existence did not need to be evidenced for registration to take place. It was agreed that: (a) subparagraph 2(d) should be deleted and guidance on any other amendment notices that required the grantor's authorization should be provided in the draft Guide to Enactment (e.g. an amendment notice to extend the duration of the registered notice); (b) paragraph 3 should be clarified and thus refer directly to the registration of an amendment notice that added a grantor, which had

to be authorized by the additional grantor; (c) paragraph 4 should also be clarified and thus refer to a transferee of encumbered assets that took its rights subject to the security right; (d) paragraph 6 should refer to evidence of authorization for the registration to occur (rather than for the registrar to "accept" a registration at its discretion); and (e) new rules should be added to the priority chapter to address the priority issues relating to the registration of an amendment notice that added encumbered assets or increased the maximum amount for which the security right might be enforced. Subject to those changes, the Working Group approved the substance of article 28.

Article 29. A notice may relate to more than one security right

85. The Working Group agreed that, to avoid inadvertently creating the impression that a notice ought to identify a security right, article 29 should be revised to provide that a single notice was "sufficient to make effective against third parties" one or more than one security right. Subject to that change, the Working Group approved the substance of article 29.

Article 30. Time when a notice may be registered

86. The Working Group agreed that the words at the end of article 30 ("provided that registration is authorized by the grantor in accordance with article 28") were unnecessary as the matter was already covered in article 28 and should thus be deleted. Subject to that change, the Working Group approved the substance of article 30.

Article 31. Time of effectiveness of a registered notice

87. With respect to paragraphs 2, 3 and 5 of article 31, it was agreed that they should be revised to make it clear that the functions referred to therein had to be performed by the registry. Subject to that change, the Working Group approved the substance of article 31.

Article 32. Period of effectiveness of a registered notice

88. It was noted that article 3 of the Annex should clarify that, if an amendment notice was not registered within the time period provided in paragraph 2 of options A and C, the amendment notice would be rejected. After discussion, the Working Group approved the substance of article 32 unchanged.

Article 33. Organization of information in registered notices

89. The Working Group approved the substance of article 33 unchanged.

Article 34. Information required in an initial notice

90. The Working Group agreed that the draft Guide to Enactment should refer to the discussion of serial number registration and unique numbers as grantor identifiers in the Secured Transactions Guide and the Registry Guide. After discussion, the Working Group approved the substance of article 34.

Article 35. Impact of a change of the grantor's identifier

91. Recalling its earlier decision with respect to articles 87 and 89 (see paras. 64 and 89 above), the Working Group agreed that examples as to the length of the time periods foreseen in that and other articles should be moved to the Guide to Enactment. In that connection, it was observed that the draft Guide to Enactment should make it clear that how short or long a period might need to be would depend on the nature of the issue and the local circumstances. It was also agreed that paragraph 1 should be revised to refer to the security right retaining "whatever priority it had before the change was made". Subject to those changes, the Working Group approved the substance of article 35.

Article 36. Impact of errors in required information

92. The Working Group approved the substance of article 36 unchanged.

Article 37. Impact of a transfer of an encumbered asset

93. With respect to article 37, the Working Group agreed that: (a) subparagraph 2(a) of options A and B should be revised to refer to a security right created by a transferee (rather than a competing security right); (b) the reference to the secured creditor's knowledge of the transfer should be moved from paragraph 2 to paragraph 1 of option B; (c) reference should be made in the draft Guide to Enactment to the discussion in the Secured Transactions Guide of the options contained in article 37; and (d) the draft Guide to Enactment should discuss the impact of the adoption of option A, B or C of article 37 on article 40. Subject to those changes, the Working Group approved the substance of article 37.

Article 38. Secured creditor's authorization

94. The Working Group agreed that the heading of article 38 should read along the following lines: "Secured creditor's authorization for registration of an amendment or cancellation notice". It was also agreed that all options should be revised to reflect the discussion in the Registry Guide better (see paras. 249-259). It was also agreed that article 38 should be coordinated with article 16 of the Annex to deal with the situation in which upon assignment of the secured obligation (and with it the security right), only the assignee (new secured creditor) would be able to register an amendment or cancellation notice. Subject to those changes, the Working Group approved the substance of article 38.

Article 39. Compulsory registration of an amendment or cancellation notice

95. While some support was expressed in favour of retaining the words "as soon as practicable" in paragraph 1, the Working Group agreed that they should be deleted. It was widely felt that those words were not necessary as, under paragraphs 2 and 3, the grantor was entitled to request the secured creditor to register an amendment or cancellation notice or to apply for that purpose to a judicial or administrative authority at any time. It was also stated that, in any case, the requirement for the grantor to act in good faith and in a commercially reasonable manner was sufficient to oblige the secured creditor to act as soon as practicable. The Working Group also agreed that paragraph 2 should be retained outside sq[illegible]are

brackets. Subject to those changes, the Working Group approved the substance of article 39.

Article 40. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration

96. The Working Group approved the substance of article 40 unchanged.

D. Annex I. Regulation (A/CN.9/WG.VI/WP.63/Add.4)

Article 1. Appointment of the registrar

97. While some doubt was expressed as to whether an executive or ministerial authority would determine the registrar's duties (rather than the Regulation), the Working Group approved the substance of article 1 of the Annex unchanged with the understanding that that authority would do so through the Regulation.

Article 2. Public access

98. With respect to article 2 of the Annex, it was agreed that: (a) the heading should be revised to read along the following lines: "access to registry services"; (b) the chapeau of paragraph 1 should be revised to read along the following lines: "to the registry"; (c) the words "to the satisfaction of the registrar" in subparagraphs 1(c) and 2(b) should be deleted as they introduced a subjective element; and (d) reference should be made throughout article 2 to the "Regulation" rather than to the "registry" to ensure that those matters were settled by an executive or ministerial authority in the Regulation rather than by the registry staff in an arbitrary way. Subject to those changes, the Working Group approved the substance of article 2 of the Annex.

Article 3. Rejection of a security right notice or search request

99. The Working Group agreed that references to a registration or a search request being rejected by the "registrar" should be deleted, since they implied a paper-based registry and endowed a subjective power on the registrar to accept or reject a registration or a search request. Acknowledging that most modern registry systems would be electronic and that registration would be automatic, the Working Group also agreed that the term "registry" (rather than the term "registrar") should be used throughout the draft Model Law and the definition of that term in the Registry Guide should be included in the draft Model Law. It was further agreed that the term "registrar" would only be mentioned in article 1 of the Annex and thus it did not need to be defined in the draft Model Law. Subject to those changes, the Working Group approved the substance of article 3 of the Annex.

Article 4. No additional conditions to be imposed on access to registry services

100. The Working Group approved the substance of article 4 of the Annex unchanged.

Article 5. Organization of information in registered notices

101. With respect to article 5 of the Annex, it was agreed that subparagraph (b) should be deleted as it dealt with a matter already addressed in article 18 of the Annex. Subject to those changes, the Working Group approved the substance of article 5 of the Annex.

Article 6. Integrity of information in registered security right notices

102. The Working Group approved the substance of article 6 of the Annex unchanged.

Article 7. Obligation to send a copy of a registered security right notice

103. With respect to article 7 of the Annex, it was agreed that: (a) wording should be added within square brackets to reflect the rule in the second sentence of recommendation 55, subparagraph (c) of the Secured Transactions Guide; (b) the words "as soon as practicable" throughout chapter IV of the draft Model Law (e.g. art. 38, para. 5) and the Annex (e.g. arts. 2, 3 and 7) should be replaced with words along the following lines: "immediately", "without delay" or "forthwith". Subject to those changes, the Working Group approved the substance of article 7 of the Annex.

Article 8. Removal of information from the public registry record and archival

104. The Working Group approved the substance of article 8 of the Annex unchanged.

Article 9. Language in which information in a security right notice must be expressed

105. The Working Group approved the substance of article 9 of the Annex unchanged.

Article 10. Correction of errors by the registrar

106. With respect to article 10 of the Annex, it was agreed that it should be aligned more closely with article 38 of the draft Model Law, as revised, and retained within square brackets. Subject to those changes, the Working Group approved the substance of article 10 of the Annex.

Article 11. Liability of the registrar

107. With respect to article 11 of the Annex, it was agreed that it should be revised to address the concerns expressed and to present additional options (e.g. liability limited up to an amount to be specified by the enacting State). Subject to those changes, the Working Group approved the substance of article 11 of the Annex.

Article 12. Determination of grantor identifier

108. With respect to article 12 of the Annex, it was agreed that: (a) the bracketed text in subparagraph 1(a) should be retained outside square brackets; and (b) subparagraph (c) should be aligned more closely with recommendation 24, subparagraph (d) of the Registry Guide. Subject to those changes, the Working Group approved the substance of article 12 of the Annex.

Article 13. Determination of secured creditor identifier

109. The Working Group approved the substance of article 13 of the Annex unchanged.

Article 14. Sufficient description of encumbered assets

110. The Working Group approved the substance of article 14 of the Annex unchanged.

Article 15. Impact of errors in required information

111. With respect to article 15 of the Annex, it was agreed that: (a) paragraph 1 should be deleted as it only provided guidance on matters addressed in other provisions; (b) paragraphs. 2 and 3 should be deleted as they were covered in article 36 of the draft Model Law or the material in article 36 of the draft Model Law and article 15 of the Annex should be placed in one article; and (c) the text within square brackets in paragraph 4 should be retained outside square brackets, while paragraph 4 as a whole should be retained within square brackets. Subject to those changes, the Working Group approved the substance of article 15 of the Annex.

Article 16. Secured creditor's authorization

112. With respect to article 16 of the Annex, it was agreed that it should be merged or aligned with article 38 of the draft Model Law. Subject to those changes, the Working Group approved the substance of article 16 of the Annex.

Article 17. Information required in an amendment security right notice

113. The Working Group approved the substance of article 17 of the Annex unchanged.

Article 18. Global amendment of secured creditor information

114. The Working Group approved the substance of article 18 of the Annex unchanged.

Article 19. Information required in a cancellation security right notice

115. The Working Group approved the substance of article 19 of the Annex unchanged.

Article 20. Compulsory registration of an amendment or cancellation security right notice

116. The Working Group approved the substance of article 20 unchanged.

Article 21. Search criteria

117. The Working Group approved the substance of article 21 unchanged.

Article 22. Search results

118. With respect to article 22 of the Annex, it was agreed that it should be revised to present an additional option under which there would no distinction between a printed search and a search certificate. Subject to those changes, the Working Group approved the substance of article 22 of the Annex.

Article 23. Fees for the services of the registry

119. With respect to article 23 of the Annex, it was agreed that option C or the Guide to Enactment should set out examples of services for which no fee should be charged, such as a restoration of an erroneously cancelled registration (art. 10 of the Annex) or the migration of information from one registry under prior law to another under the new law. Subject to that change, the Working Group approved the substance of article 23 of the Annex.

V. Future work

120. The Working Group considered a proposal that the provisions in chapter IV of the draft Model Law and the Annex should be presented as one whole. It was stated that the inclusion of registry-related provisions in an annex might inadvertently imply that they were less important or did not belong in a law. In addition, it was observed that the division of the registry-related provisions between the draft Model Law and the Annex might result in duplication, gaps or inconsistencies and, in any case, made it more difficult for States to understand and implement. Moreover, it was pointed out that, if the current division of the registry-related provisions was to be maintained, at least the criteria for that division should be explained in the Guide to Enactment to avoid any negative implication and provide guidance to States as to how to implement them. There was broad support in the Working Group for that proposal. It was further stated that it was important to present the registry-related provisions as model legislative rules, leaving it to each State to determine the exact manner of their implementation (e.g. in the secured transactions law, another law, a Regulation or a combination thereof). After discussion, the Working Group agreed that the registration-related provisions in the draft Model Law and the Annex should be reflected all together as a whole in the Annex, while chapter IV could be reduced to a provision stating that a registry was established and enacting States should implement the registry-related provisions in the Annex.

121. The Working Group next considered the question whether to recommend to the Commission the preparation of a guide to enactment of the draft Model Law. The Working Group noted that, in preparing the draft Model Law, it was mindful of the fact that the draft Model Law would be a more effective tool for States modernizing their legislation if background and explanatory information were provided to assist States in considering the draft Model Law for enactment. In addition, the Working Group noted that, in the preparation of the draft Model Law, it had assumed that the draft Model Law would be accompanied by such a guide and referred a number of matters for clarification in that guide. Moreover, the Working Group noted that the draft Model Law would be used in a number of States with limited familiarity with the types of secured transaction considered in the draft Model Law and thus, the draft Guide to Enactment, much of which will be drawn from the travaux

préparatoires of the draft Model Law, would also be helpful to other users of the text, such as judges, arbitrators, practitioners and academics. The Working Group also noted that the draft Guide to Enactment would briefly explain the thrust of each provision or section of the draft Model Law and any difference with the corresponding recommendations of the Secured Transactions Guide or the provisions of another UNCITRAL text on secured transactions. It was also noted that, in order to avoid duplication, the draft Guide to Enactment would include extensive cross-references to those texts and in particular the Secured Transactions Guide and the Registry Guide. After discussion, the Working Group decided to recommend to the Commission that it assign to the Working Group the task of preparing a draft Guide to Enactment of the draft Model Law.

122. The Working Group then turned to discuss the planning of its future work with a view to ensuring that it would be able to submit the draft Model Law and the draft Guide to Enactment to the Commission for final consideration and adoption at its forty-ninth session in 2016. It was agreed that the draft Model Law was a comprehensive text and the work of the Working Group and the Commission would be greatly facilitated if a part of the draft Model Law that was sufficiently mature and distinct could be submitted to the Commission for approval in principle at its upcoming forty-eighth session, which was scheduled to take place in Vienna from 29 June to 16 July 2015. It was also agreed that the registry-related provisions that reflected the policy decisions made by the Commission when it adopted the Registry Guide in 2013 could be submitted to the Commission for approval in principle, as they were sufficiently mature and formed a distinct part of the draft Model Law. It was also agreed that the drafting of those provisions could be finalized by the Working Group at a later stage. It was further agreed that the chapters of the draft Model law on transition and conflict of laws were equally mature and distinct and could thus also be submitted to the Commission for approval in principle. After discussion, the Working Group decided to submit to the Commission the registry-related provisions in the draft Model Law and the Annex, as well as the chapters on transition and conflict of laws, for approval in principle at its upcoming forty-eighth session.

123. The Working Group noted that its next session was scheduled to take place in Vienna from 12 to 16 October 2015, those dates being subject to confirmation by the Commission at its upcoming forty-eighth session.

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Technical cooperation and assistance

Note by the Secretariat

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I. Introduction

1. Pursuant to a decision taken at its twentieth session in 1987, technical cooperation and assistance activities aimed at promoting the use and adoption of its texts represent one of the priorities of the United Nations Commission on International Trade Law (UNCITRAL).[1]

2. In its resolution 67/89 of 14 January 2013, the General Assembly reaffirmed the importance, in particular for developing countries and economies in transition, of the technical cooperation and assistance work of the Commission and reiterated its appeal to bodies responsible for development assistance, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission.

3. The General Assembly welcomed the initiatives of the Commission towards expanding, through its Secretariat, its technical cooperation and assistance programme, and noted with interest the comprehensive approach to technical cooperation and assistance, based on the strategic framework for technical assistance suggested by the Secretariat to promote universal adoption of the texts of the Commission and to disseminate information on recently adopted texts.

4. The General Assembly also stressed the importance of promoting the use of texts emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urged States that have not yet done so to consider signing, ratifying or acceding to those conventions, enacting model laws and encouraging the use of other relevant texts.

5. The status of adoption of UNCITRAL texts is regularly updated and available on the UNCITRAL website. It is also compiled annually in a note by the Secretariat entitled "Status of conventions and model laws" (for the Commission's forty-eighth session, see A/CN.9/843).

6. This note sets out the technical cooperation and assistance activities of the Secretariat subsequent to the date of the previous note submitted to the Commission at its forty-seventh session in 2014 (A/CN.9/818 of 2 May 2014), and reports on the development of resources to assist technical cooperation and assistance activities.

7. A separate document (A/CN.9/838) provides information on current activities of international organizations related to the harmonization and unification of international trade law and on the role of UNCITRAL in coordinating those activities.

II. Technical cooperation and assistance activities

A. General approaches

8. Technical cooperation and assistance activities undertaken by the Secretariat aim at promoting the adoption and uniform interpretation of UNCITRAL legislative

[1] *Official Records of the General Assembly, Forty-second Session, Supplement No. 17* (A/42/17), para. 335.

texts. Such activities include providing advice to States considering signature, ratification or accession to UNCITRAL conventions, adoption of an UNCITRAL model law or use of an UNCITRAL legislative guide.

9. Technical cooperation and assistance may involve: undertaking briefing missions and participating in seminars and conferences, organized at both regional and national levels; assisting countries in assessing their trade law reform needs, including by reviewing existing legislation; assisting with the drafting of national legislation to implement UNCITRAL texts; assisting multilateral and bilateral development agencies to use UNCITRAL texts in their law reform activities and projects; providing advice and assistance to international and other organizations, such as professional associations, organizations of attorneys, chambers of commerce and arbitration centres, on the use of UNCITRAL texts; and organizing training activities to facilitate the implementation and interpretation of legislation based on UNCITRAL texts by judges and legal practitioners.

10. Design and implementation of technical cooperation and assistance activities took place in line with the priorities identified for such activities, which include: stressing a regional and subregional approach in order not only to achieve economies of scale but also to complement ongoing regional integration initiatives; promoting the universal adoption of those international trade law texts already enjoying wide acceptance, and making particular efforts to disseminate information on recently adopted texts, with a view, if such texts were treaties, to fostering their early adoption and entry into force (A/66/17, para. 255).

11. Some of the key activities undertaken in the relevant time period are described below. Activities denoted with an asterisk were funded by the UNCITRAL Trust Fund for Symposia.

Initiatives for a regional approach

12. The Secretariat continued participating in the Asia-Pacific Economic Cooperation (APEC) Ease of Doing Business (EoDB) project on enforcing contracts in cooperation with the Ministry of Justice of the Republic of Korea. The project aims at strengthening the legislative and institutional framework for the enforcement of contracts in APEC economies and has been expanded to include non-APEC economies as well. During the reporting period, UNCITRAL participated in projects focusing on Mexico (Mexico City, 26-28 May 2014)*, Myanmar (Naypyidaw, 28-30 August 2014)*, Sri Lanka (Colombo, 27-29 January 2015)* and Thailand (Bangkok, 1-3 April 2015)*. The legal environment for enforcing contracts varied to quite an extent in these four States as well as their adoption of UNCITRAL texts. Recommendations for legal reforms were presented to respective government officials during the fourth and fifth APEC EoDB wrap-up seminars: the fourth for Mexico and Myanmar (Seoul, 25-27 November 2014)* and the fifth for Sri Lanka and Thailand (Seoul, 5-7 May 2015)*. The Secretariat also participated in the conference "World Bank and Ministry of Justice Doing Business 2014 and Beyond: Smart Regulation towards Sustainable Growth", which aimed at expanding the APEC EoDB project to areas other than enforcing contracts and to seek further coordination with the World Bank on its Doing Business indicators (Seoul, 12-15 May 2014)*. The Secretariat's participation in this project was made possible through the continued voluntary contribution from the Government of the Republic of Korea.

13. Additional information on the regional technical assistance and cooperation activities of the UNCITRAL Regional Centre for Asia and the Pacific is available in the dedicated report (A/CN.9/842).

Promotion of the universal adoption of fundamental trade law instruments

14. The Secretariat has continued to engage in promoting the adoption of fundamental trade law instruments, i.e., those treaties that are already enjoying wide adoption and the universal participation to which would therefore seem particularly desirable.

15. The treaties currently considered under that approach are the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)[2] (the "New York Convention", a United Nations convention adopted prior to the establishment of the Commission, but actively promoted by the Commission), whose universal adoption has already been explicitly called for by the General Assembly,[3] and the CISG.

Promotion of recent treaties

16. The Secretariat continues to promote recently adopted treaties in order to encourage their signature and adoption by States with a view to facilitating their early entry into force and, when already in force, to consolidate their status as globally accepted standards. Treaties currently considered under that approach include the United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005),[4] the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014) (the "Mauritius Convention on Transparency") and the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (New York, 2008) (the "Rotterdam Rules").[5]

17. The Secretariat organized jointly with the Government of Mauritius an event for the opening of the Mauritius Convention on Transparency to signature by States (Port Louis, 17 March 2015).*

18. In promoting the signature and ratification of the Rotterdam Rules, the Secretariat has participated in the Asian Experts Group Meeting to promote ratification in the region, hosted by RCAP and Comité Maritime International in Singapore on 22 April 2015, and has participated as a speaker in the 7th Asian Maritime Law Conference (Singapore, 23-24 April 2015)*.

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[2] United Nations, *Treaty Series*, vol. 330, No. 4739.

[3] United Nations General Assembly, Resolution 62/65 of 8 January 2008, para. 3.

[4] General Assembly resolution 60/21, annex.

[5] General Assembly resolution 63/122, annex.

B. Specific activities

Sale of goods

19. For detailed information on the activities of the Secretariat related to the promotion of the adoption, use and uniform interpretation of UNCITRAL texts on the international sale of goods, see document A/CN.9/849.

Dispute resolution

20. The Secretariat has been engaged in the development of instruments and tools to provide information on the application and interpretation of UNCITRAL texts in the field of dispute settlement. The Secretariat has also been engaged in training activities, in the promotion of instruments relating to arbitration and conciliation as well as in supporting ongoing legislative work. Given the high rate of adoption of these texts, the demand for technical assistance in the field of dispute resolution remains particularly acute.

(i) Development of instruments and tools to provide information on the application and interpretation of UNCITRAL texts in the field of dispute settlement

21. Regarding the New York Convention, the website (www.newyorkconvention1958.org) which was established in order to make the information gathered in the preparation of the UNCITRAL guide on the New York Convention publicly available,[6] has been expanded with the inclusion of case law from additional jurisdictions, as well as with comprehensive bibliographical references.

22. Regarding the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 (the "Model Law on Arbitration"),[7] the Secretariat is currently working on updating the 2012 Digest of Case Law on the Model Law on International Commercial Arbitration.[8]

(ii) Supporting ongoing legislative work and training activities

23. The Secretariat has reviewed or provided comments on legislation on arbitration of Albania, Bahrain, Brazil, British Virgin Islands, Colombia, Colorado (a state of the United States), Georgia, India, Kazakhstan, Mongolia, Montenegro, Myanmar, Palestine, Panama, Qatar, and Turkmenistan.

24. The Secretariat co-organized, with the Austrian Arbitration Association, the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC), the International Chamber of Commerce Austria and the Young Austrian Arbitration Practitioners (YAAP), the Vienna Arbitration Day 2015 (Vienna, 13-14 February 2015).

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[6] *Official Report of the General Assembly, Sixty-seventh session, Supplement No. 17* (A/57/17), paras. 135 and 136.

[7] United Nations publication, Sales No. E.08.V.4.

[8] Available from www.uncitral.org/uncitral/en/case_law/digests.html.

25. Other events on international arbitration in which the Secretariat participated or contributed include:

(a) Alternative Dispute Resolution Workshop, whose purpose was to provide training on arbitration and conciliation legislative frameworks (Kiev, 20-22 May 2014);

(b) Second China-Europe Legal Forum, aimed at enhancing legal exchanges and promoting trade and economic cooperation, organized in cooperation with the European Parliament and the Austrian Parliament (Vienna, 26-27 June 2014);

(c) Expert Group Meetings of the Energy Charter Treaty secretariat to present the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, and the Mauritius Convention on Transparency (Brussels, 4 June 2014 and 21 April 2015), and (ii) the UNCITRAL Rules on Conciliation (Vienna, 13 November 2014);

(d) Conference "International Commercial Arbitration: The UNCITRAL Model Law and Beyond" organized by the Bar Ilan University, (Tel Aviv, 7-10 June 2014);

(e) Conference on the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings, organized jointly with the Vienna International Arbitration Centre (VIAC) as a side event during the session of the UNCITRAL Working Group II (Arbitration and Conciliation) (Vienna, 16 September 2014);

(f) The 2014 UNCITRAL Hong Kong Seminar in cooperation with the Hong Kong International Arbitration Centre (HKIAC) which dealt with transparency in investor-State dispute settlement (Hong Kong, 15 October 2014)*;

(g) The 2014 UNCITRAL Asia Pacific Fall Conference — Trade Development through the Harmonization of Commercial Law, organized in cooperation with the University of Macau (Macau, 17-18 October 2014)*;

(h) A colloquium on alternative dispute resolution organized in conjunction with L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) for its member States (Abidjan, 17-22 October 2014)* where a presentation was made by the Secretariat on arbitration and mediation legislative frameworks;

(i) A regional round table on arbitration-related topics, organized with the German cooperation organization, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), for its project in the Balkan region; consideration of the Albanian arbitration law (Tirana, 12-14 November 2014);

(j) The 2014 Slovenian Arbitration Conference and the Joint UNCITRAL-Ljubljana Arbitration Centre (LAC) Conference on Dispute Settlement in conjunction with LAC (Ljubljana, 11 November 2014 and 24 March 2015);

(k) Conference on the Role of State Courts in International Commercial Arbitration (Sharm el-Sheikh, Egypt, 15-18 November 2014);

(l) Third Asia-Pacific Alternative Dispute Resolution Conference organized by the UNCITRAL Regional Centre for Asia and the Pacific jointly with the Ministry of Justice of the Republic of Korea and the Korean Commercial Arbitration Board (Seoul, 15-19 November 2014)*;

(m) Training on arbitration-related issues to representatives of the Government of Kazakhstan (Vienna, 17-20 November 2014);

(n) Conference organized by the Kiel Centre for Eurasian Economic Law (KEEL) on "Settlement of International Trade Disputes in the Region of the Caucasus and Central Asia: Public and Private Mechanisms" (Kiel, Germany, 28-29 November 2014);

(o) Workshop on arbitration jointly organized with the Economic Cooperation Organization (ECO) for ECO member States (Tehran, 2 December 2014)*;

(p) Round table organized by the Brussels Office of the Trans-Atlantic Business Council (TABC) to deliver a presentation on UNCITRAL perspectives on investor-State dispute settlement (Brussels, 4 December 2014);

(q) Annual Conference organized by the Investment Security in the Mediterranean (ISMED) Initiative, "Defining a Way Forward for Infrastructure Investment in the Middle-East and North Africa (MENA)" (Paris, 4-5 December 2014)*;

(r) International Conference for Euro-Mediterranean Community of International Arbitration (Marseilles, France, 8-9 December 2014)*;

(s) Mauritius International Arbitration Conference 2014 (MIAC) (Flic-en-Flac, Mauritius, 15-16 December 2014);

(t) Meetings with the Arbitration Court at the Chamber of Economy of Montenegro (Podgorica, 30 December 2014);

(u) Asia Pacific Mediation Summit on building sustainable mediation programmes and commercial and cross-border mediation (New Delhi, 12-15 February 2015)*;

(v) Meeting with Permanent Secretary of OHADA (Vienna, 19-20 February 2015);

(w) Third International Conference of ICC Palestine with respect to the new Palestinian Arbitration Law and training with regard to the New York Convention (Ramallah, 26-28 February 2015)*;

(x) Arbitration round table organized by the Commercial Law Development Program (CLDP), ICC-Paris, the Bahrain Chamber for Dispute Resolution (BCDR-AAA) and the Judicial Council of Amman (Amman, 5-7 March 2015)*;

(y) Conference on UNCITRAL's work on transparency with regards to the investments in the Mena region (Besancon, France, 13 March 2015)*;

(z) International conference on investor-State arbitration and arbitration in general which preceded the signing ceremony of the Mauritius Convention on Transparency (Port Louis, 17 March 2015)*;

(aa) International Arbitration Conference at Comenius University to discuss amendments to Slovakia's Arbitration Act (Bratislava, 23 April 2015); and

(bb) A presentation to Members of the European Parliament on "ISDS transparency in practice" at a seminar on "ISDS in the TTIP" organized by the Stockholm Chamber of Commerce (Brussels, 5 May 2015).

Electronic commerce

26. The Secretariat has continued promoting the adoption of UNCITRAL texts on electronic commerce, including in cooperation with other organizations and emphasizing a regional approach. In that framework, the Secretariat has provided comments on draft regional and national legislation and engaged in informal consultation with legislators and policymakers from various jurisdictions.

27. Activities relating to promoting the adoption of UNCITRAL texts on electronic commerce and their effective use and uniform interpretation where already adopted include:

(a) Delivering a presentation on the possible contribution of UNCITRAL texts, in particular the Electronic Communications Convention, in promoting cross-border recognition of electronic signatures between European Union member States and non-European Union member States at the 14th European Forum on Electronic Signature (EFPE 2014) (Miedzyzdroje, Poland, 4-6 June 2014)*;

(b) Delivering presentations at an event for Malagasy commercial operators and practitioners and at a judiciary training workshop. The participation of one expert from the region was also funded (Antananarivo, 8-10 July 2014)*. In 2014, Madagascar has adopted laws on e-commerce and e-signature based on UNCITRAL texts;[9]

(c) Delivering presentations at a workshop on the new law of San Marino on electronic transactions. (San Marino, 22 December 2014), adopted in 2013 and based on UNCITRAL texts.[10] The participation of two experts from the region was also funded;

(d) Delivering presentations at the UNCTAD — ECOWAS Seminar on Cyberlaw Harmonisation and at the UNCTAD Expert Meeting on Cyberlaws and Regulations for Enhancing E-Commerce: including Case Studies and Lessons Learned (Geneva, 23-27 March 2015).

28. Additional relevant events are listed in the note prepared by the UNCITRAL Regional Centre for Asia and the Pacific on its activities (see A/CN.9/842).

Procurement

29. In accordance with requests of the Commission and Working Group I (under its former mandate on Public Procurement and Infrastructure Development), the Secretariat has established links with other international organizations active in procurement reform to foster cooperation with regard to the UNCITRAL Model

[9] See press release UNIS/L/212, "Madagascar Adopts Electronic Transactions and Electronic Signature Law Based on UNCITRAL Texts", 16 January 2015.

[10] See press release UNIS/L/184, "San Marino Adopts Electronic Commerce Law Based on UNCITRAL Texts", 24 May 2013.

Law on Public Procurement (2011) (the "Model Law"),[11] its accompanying Guide to Enactment (2012),[12] and the UNCITRAL texts on Privately-Financed Infrastructure Projects.[13]

30. The aims of such cooperation are to ensure that reforming Governments and organizations are informed of the terms of and the policy considerations underlying those texts, including as regards regional requirements and circumstances, so as to promote a thorough understanding and appropriate use of the Model Law.[14] The Secretariat is following a regional approach to this cooperation through activities with the multilateral development banks and other organizations, addressing the role of public procurement in sustainable development, good governance, the avoidance of corruption and achieving value for money in government expenditure.

31. The main such activities and international events in the year to June 2015, in which the Secretariat has participated as speaker/presenter, included:

(a) Participation as a speaker on the legislative framework for Public-Private Partnerships (PPPs) and modern trends in that field, at the first Songdo Asia-Pacific Conference on PPPs co-organized by Korean Legislation Research Institute and the Korean International Trade Law Association and UNCITRAL RCAP (Incheon, Republic of Korea, 9-10 June 2014);

(b) Participation as a member of the Working Party of the OECD's Leading Practitioners on Public Procurement, in a session of the Public Integrity Network, in a joint seminar on Whistle-blower Protection, and on implementation of the 2015 OECD Recommendation on Public Procurement (Paris, 17-18 June 2014 and 27-28 April 2015 (virtual participation));

(c) Participation as a speaker at a regional conference "Procurement Week 2015", organized by the Institute for Competition and Procurement Studies and the Welsh Government (Cardiff, 17-20 March 2015);

(d) Participation in the Center for Global Development Working Group on Contract Publication, and contributions to "Publishing Government Contracts: Addressing Concerns and Easing Implementation"[15] (Washington, D.C., 8-9 September 2014);

(e) Presentation at a Regional Seminar on fraud and corruption in public procurement at the International Anti-Corruption Academy, (Vienna, 18 September 2014);

(f) Participation as a speaker in the European University Institute Global Governance Programme Conference on "The Internationalization of Government Procurement Regulation", to discuss the impacts of international cooperation in

[11] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), annex I.

[12] Available at www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure.html.

[13] The UNCITRAL Legislative Guide (with Legislative Recommendations) and its Model Legislative Provisions on Privately-Financed Infrastructure Projects, available at www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.

[14] See documents A/CN.9/575, paras. 52 and 67, A/CN.9/615, para. 14, and A/66/17, paras. 186-189.

[15] www.cgdev.org/publication/publishing-government-contracts-addressing-concerns-and-easing-implementation.

UNCITRAL, the WTO and regarding preferential trade agreements (Florence, Italy, 15-16 December 2014);

(g) Within the framework of an EBRD UNCITRAL Public Procurement Initiative, with the support of the OSCE: (i) Presentation of the Model Law and supporting Guide to Enactment on complaints mechanisms and related topics at a regional seminar on Safeguards for Effective Review of Complaints in Public Procurement: Legislation and Practice (Vienna, 28-29 May 2015); (ii) Regional Seminar on public procurement reforms sessions for the Kyrgyz Republic and Tajikistan (Vienna, 22-23 September 2014); (iii) Attendance at six-monthly review meetings of the progress on the Initiative and activities in cooperation with other development partners, such as OECD, OECD-SIGMA, ADB, IsDB, EIB, and others (London, 2 September 2014 (virtual meeting) and 12 January 2015); and (iv) Rounds of consultations with drafters of primary and secondary public procurement legislation and supporting donors in the Kyrgyz Republic and Tajikistan (throughout the year);

(h) Participation in World Bank's International Advisory Group on Procurement, to review and comment on the proposed new Framework for procurement, held at the World Bank Country Office in Egypt (Cairo, 17-18 February 2015);

(i) Contributions to the World Bank's "Benchmarking Public Procurement" report, and participation in a joint World Bank Group — George Washington University Law School panel on the topic (Washington, D.C., 12 March 2015 (virtual participation));

(j) Presentation of UNCITRAL's legislative texts on Privately-Financed Infrastructure Projects and possible future work on PPPs to IADB staff (Washington, D.C., April 9, 2015 (virtual presentation));

(k) Participation in the OECD Task Force on Procurement, co-chaired by the World Bank and the AfDB, to consider revisions to the OECD-DAC methodology for the assessment of public procurement systems, and the establishment of a global community of practice for public procurement (Manila, 20-21 April 2015 (virtual participation).

Supporting ongoing legislative work and training activities

32. The Secretariat has provided advice to the Governments of the Dominican Republic, Jamaica, Surinam and Trinidad and Tobago (with the support of the IADB) and to Kazakhstan, the Kyrgyz Republic and Tajikistan (within the framework of the EBRD UNCITRAL Public Procurement Initiative) on reform of their public procurement legal and regulatory framework.

33. The Secretariat has participated as a lecturer in (i) the programme of an Executive LLM in Public Procurement Law and Policy (University of Nottingham, United Kingdom, 10-11 January 2015; (ii) the 8th and 9th editions of the ITC-ILO Master in Public Procurement for Sustainable Development (Turin, Italy, 17-18 and 30 June 2014 and 2-3 March 2015); and (iii) the International Master in Public Procurement Management (PPM) course at the University of Rome, and in conjunction with the EBRD, Department of Business Government Philosophy Studies (Rome, 16-17 April 2015).

34. Further activities in this field are listed in the note prepared by the UNCITRAL Regional Centre for Asia and the Pacific on its activities (see A/CN.9/842).

Insolvency

35. The Secretariat has promoted the use and adoption of insolvency texts, particularly the UNCITRAL Model Law on Cross-Border Insolvency (1997)[16] and the UNCITRAL Legislative Guide on Insolvency Law (2004),[17] through participation as a speaker at various international meetings and conferences, including:

(a) The European Insolvency and Restructuring Conference on International Insolvency Law Harmonization (Brussels, 23 May 2014), addressing the UNCITRAL process of harmonization and modernization as it relates to insolvency law in a panel on Reforming European National Insolvency Laws: A View from the Executive;

(b) The annual Conference of the International Exchange of Experience on Insolvency Law network (Barcelona, Spain, 28-30 May 2014) to present a lecture on the UNCITRAL process of harmonization and modernization as it relates to insolvency law, focusing on cross-border insolvency;

(c) Meetings with the Law Council of Australia and the Australian Attorney-General's Department (Canberra) concerning Australia's participation at UNCITRAL and seminars on the work of UNCITRAL, focussing on insolvency (Sydney, Canberra and Melbourne, Australia, 24-26 June 2014)*;

(d) Regional Conference of the Arab Center for the Development of the Rule of Law and Integrity (ACRLI) — "Middle East Bankruptcy Reform Initiative project" (Amman, 14-15 September 2014) to discuss international best practice based on the UNCITRAL Legislative Guide on Insolvency Law;

(e) Africa Round Table on Insolvency Reform (ART) (Kampala, 15-18 October 2014).* The Round Table was established with the aim of facilitating discussion of insolvency law reform in Africa and identifying outcomes for further action. This event attracts participation at a high level and includes judges, government officials from both insolvency, company supervisory and other relevant ministries, insolvency professionals, bankers, and international organizations. Significant reform in some countries of the region has provided an impetus to others, as they compare themselves to best practice and international standards. As a result, we are seeing increasing enactment of the Model Law on Cross-Border Insolvency;

(f) Seminar for the American College of Bankruptcy at Boston College on the history of the UNCITRAL Model Law on Cross-Border Insolvency (Boston, United States of America, 20 March 2015);

(g) The 11th Joint UNCITRAL/INSOL/World Bank Multinational Judicial Colloquium, which aims to share information on and promotion of greater understanding of, cross-border insolvency cooperation and the key facilitating role

[16] General Assembly resolution 52/158, annex.

[17] United Nations publication, Sales No. E.05.V.10.

of the Model Law on Cross-Border Insolvency. The participation of three judges from Uganda, Kenya and Romania was also funded (San Francisco, United States, 21-22 March 2015)*; and

(h) Insolvency law in Europe: current trends and future perspectives, organized by the Latvian Presidency of the EU, Latvian Ministry of Justice and the EC (Jurmala, Latvia, 23-24 April 2015).

36. The Secretariat liaised with the Philippines concerning enactment of the Model Law on Cross-Border Insolvency to clarify certain aspects of the legislation and reviewed the enactments of the Model Law by Chile, Seychelles and Vanuatu.

Security interests

37. The approach taken by the Secretariat in providing technical assistance related to UNCITRAL texts on security interests (the United Nations Convention on the Assignment of Receivables in International Trade (2001), the UNCITRAL Legislative Guide on Secured Transactions (2007), its Supplement on Security Rights in Intellectual Property and the UNCITRAL Guide on the Implementation of a Security Rights Registry (2013)) is twofold. The first approach focuses on disseminating information about those texts to Government officials, legislators, judges, academics and practitioners and thus, promoting their implementation. Such activities included the following:

(a) Participated in a panel session and delivered a presentation at the "Capacity-Building Seminar on Secured Transactions Reform" organized by the Organization of American States (OAS) (San Salvador, 21-23 May 2014)*;

(b) Participated in the 14th Annual Conference of the International Insolvency Institute (III) and in the conference on secured financing and registries with the Mexican Ministry of Economy, General Direction of Business Regulation (Mexico City, 8-11 June 2014)*;

(c) Delivered a presentation at the Conference on "Current Developments in International and Comparative Insolvency Law: Corporates, Financial Institutions and Sovereigns" organized by European University Institute (Florence, Italy, 23-25 July 2014);

(d) Delivered a presentation at the International Symposium on "Intellectual Property and Venture Capital: the Secrets to Building Innovation Ecosystems" organized by Kyushu University School of Law and Hokkaido University School of Law and at a seminar held by the Institute of Foreign and Investment Studies of the Bank of Japan; meetings with the Ministry of Justice and Finance (Tokyo, 2-9 September 2014);

(e) Participated at a seminar organized by the Centre for Banking and Financial Law, the Federal Ministry of Justice of Switzerland and the University of Geneva on the draft UNCITRAL Model Law on Secured Transactions (Geneva, 19 September 2014);

(f) Conducted: (i) briefings of officials of the Istanbul Chamber of Commerce-Istanbul Ticaret Odasi (ITO) and the Central Securities Depository-Merkezi Kayit Kuruluşu (MKK); (ii) a seminar on security interests registries based on the UNCITRAL Guide on the Implementation of a Security

Rights Registry; and (iii) a seminar on security interests in bank accounts and non-intermediated securities, and security interests in insolvency based on the UNCITRAL Legislative Guide on Secured Transactions and the draft Model Law on Secured Transactions (Istanbul, 28 October-1 November 2014);

(g) Participated at the Commercial Finance Association (CFA) 70th Annual Convention and presentation of work of UNCITRAL in the area of security interests (Washington, D.C., 12-14 November 2014);

(h) Participated in a seminar on secured transactions organized by the Vienna University of Economics and Business (Vienna, 23 February 2015); and

(i) Delivered a presentation at a conference on secured transactions in the work of UNCITRAL organized by the European Law Institute (ELI) in cooperation with the Austrian Bank Association and the University of Vienna Law School (Vienna, 6 March 2015).

Supporting ongoing legislative work and training activities

38. Staff members of the Secretariat participated as lecturers on secured financing based on the UNCITRAL texts in: (a) the ITC-ILO course on International Trade Law (Turin, Italy, 24-25 February 2015); (b) a course organized by the Civil Law Institute of the University of Vienna Law School (Vienna, fall 2014); and (c) a course jointly organized by the Civil Law Institute of the University of Vienna Law School and the European and Asian Legal Studies programme of the University of Vienna and the City University of Hong Kong (Vienna, spring 2015).

39. The second approach focuses on providing technical assistance to States in their secured transactions law reform activities. An example of such activities is the technical assistance provided in cooperation with the World Bank Group to the Government of Trinidad and Tobago with respect to efforts to reform their secured transactions law. Another example is the capacity-building/technical assistance provided to the Government of Jamaica in cooperation with the Organization of American States. The objective of this cooperation is to ensure that technical assistance is provided consistent with UNCITRAL texts and in particular the UNCITRAL Legislative Guide on Secured Transactions.

40. The Secretariat also engages in informal consultation with legislators and policymakers from various jurisdictions, in some instances as a follow-up to the aforementioned activities. Finally, the Secretariat is making progress in its work with the World Bank with a view to revising the World Bank Insolvency and Creditor Rights Standard to include the key recommendations of the UNCITRAL Legislative Guide on Secured Transactions and reference to the other texts of UNCITRAL on security interests.

Micro, Small and Medium-sized Enterprises

41. The Secretariat has encouraged participation in and dialogue in respect of its work on micro, small and medium-sized enterprises (MSMEs — Working Group I) through its participation, in the Corporate Registers Forum (CRF) annual conference, "Corporate Registration as a Driving Force for Entrepreneurship" (Abu Dhabi, 9-12 March 2015)*.

III. Dissemination of information

42. A number of publications and documents prepared by UNCITRAL serve as key resources for its technical cooperation and assistance activities, particularly with respect to dissemination of information on its work and texts.

A. Website

43. The UNCITRAL website, available in the six official languages of the United Nations, provides access to full-text UNCITRAL documentation and other materials relating to the work of UNCITRAL, such as publications, treaty status information, press releases, events and news. In line with the organizational policy for document distribution, official documents are provided, when available, via linking to the United Nations Official Document System (ODS).

44. In 2014, the website received roughly 640,000 unique visitors, an increase from 2013 (575,000 unique visitors). Of all sessions, roughly 58 per cent were directed to pages in English and 42 per cent to pages in Arabic, Chinese, French, Russian and Spanish. In this respect, it should be noted that, while the UNCITRAL website is among the most important electronic sources of information on international trade law in all languages, it may represent one of few available sources on this topic in some of the official languages.

45. The content of the website is updated and expanded on an ongoing basis in the framework of the activities of the UNCITRAL Law Library and therefore at no additional cost to the Secretariat. The General Assembly has welcomed "the continuous efforts of the Commission to maintain and improve its website, including by developing new social media features, in accordance with the applicable guidelines."[18] In this regard, a Tumblr microblog has been established ("What's new at UNCITRAL?") that is accessible from the UNCITRAL website. Another update is the establishment of interactive status maps for the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958),[19] the UNCITRAL Model Law on International Commercial Arbitration (1985),[20] and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980).[21]

B. Library

46. Since its establishment in 1979, the UNCITRAL Law Library has been serving research needs of Secretariat staff and participants in intergovernmental meetings convened by UNCITRAL. It has also provided research assistance to staff of Permanent Missions, global staff of the United Nations, staff of other Vienna-based international organizations, external researchers and law students. In

[18] General Assembly resolution 69/115.

[19] Available from www.uncitral.org/uncitral/uncitral_texts/arbitration/NYConvention_status_map.html.

[20] Available from www.uncitral.org/uncitral/uncitral_texts/arbitration/1985Model_arbitration_status_map.html.

[21] Available from www.uncitral.org/uncitral/uncitral_texts/sale_goods/1980CISG_status_map.html.

2014, library staff responded to approximately 650 reference requests, a 19 per cent increase over 2013, originating from over 43 countries.

47. The collection of the UNCITRAL Law Library focuses primarily on international trade law and currently holds over 10,000 monographs, 100 active journal titles, legal and general reference material, including non-UNCITRAL United Nations documents, documents of other international organizations; and electronic resources (restricted to in-house use only). Particular attention is given to expanding the holdings in all of the six United Nations official languages. While use of electronic resources has increased, resources on trade law from many countries are still only found in print, and circulation of print items has remained steady (a roughly 8 per cent increase in 2014 over 2013).

48. The UNCITRAL Law Library maintains an online public access catalogue (OPAC) jointly with the other United Nations libraries in Vienna. The OPAC is available via the library page of the UNCITRAL website.[22] In 2015, the OPAC will be updated, providing an easier to use and enhanced interface.

49. The UNCITRAL Law Library staff prepares for the Commission an annual "Bibliography of recent writings related to the work of UNCITRAL". The bibliography includes references to books, articles and dissertations in a variety of languages, classified according to subject (for the forty-eighth Commission session, see A/CN.9/839). Individual records of the bibliography are entered into the OPAC, and the full-text collection of all cited materials is maintained in the Library collection. Monthly updates from the date of the latest annual bibliography are available in the bibliography section of the UNCITRAL website.

50. The Library produces a consolidated bibliography of writings related to the work of UNCITRAL on the UNCITRAL website.[23] The consolidated bibliography aims to compile all entries of the bibliographical reports submitted to the Commission since 1968. It currently contains over 7,500 entries, reproduced in the English and the original language versions, verified and standardized to the extent possible.

C. Publications

51. In addition to official documents, UNCITRAL traditionally maintains two series of publications, namely the texts of all instruments developed by the Commission and the UNCITRAL Yearbook. Publications are regularly provided in support of technical cooperation and assistance activities undertaken by the Secretariat, as well as by other organizations where the work of UNCITRAL is discussed, and in the context of national law reform efforts.

52. The following works were published in 2014: Guide to Enactment of the UNCITRAL Model Law on Public Procurement,[24] UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013),[25] UNCITRAL Guide on the Implementation of a Security Rights Registry, UNCITRAL Model Law on

[22] Available from www.uncitral.org/uncitral/publications/library.html.

[23] Available from www.uncitral.org/uncitral/publications/bibliography_consolidated.html.

[24] Available from www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.

[25] Available from www.uncitral.org/uncitral/uncitral_texts/arbitration.html.

Cross-Border Insolvency: The Judicial Perspective (Updated 2013),[26] UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation,[27] UNCITRAL Model Law on Public Procurement,[28] UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration,[29] and the 2011 UNCITRAL *Yearbook*.[30]

53. The following work was published in early 2015: United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (New York, 2014).[31]

54. In light of budget and environmental concerns, the Secretariat has continued its efforts to use electronic media as a primary method to disseminate UNCITRAL texts. Thus, print runs for all publications have been reduced and several texts published in 2014 have been published exclusively in electronic format, namely: Guide to Enactment of the UNCITRAL Model Law on Public Procurement (e-book), UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (Updated 2013) (e-book), and the 2011 UNCITRAL *Yearbook* (CD-ROM and e-book).

D. Press releases

55. Press releases are being regularly issued when treaty actions relating to UNCITRAL texts take place or information is received on the adoption of an UNCITRAL model law or other relevant text. Press releases are also issued with respect to information of particular importance and direct relevance to UNCITRAL. Those press releases are provided to interested parties by e-mail and are posted on the UNCITRAL website, as well as on the website of the United Nations Information Service (UNIS) in Vienna or of the Department of Public Information, News and Media Division in New York, if applicable.

56. To improve the accuracy and timeliness of information received with respect to the adoption of UNCITRAL model laws, since such adoption does not require a formal action with the United Nations Secretariat, and to facilitate the dissemination of related information, the Commission may wish to request Member States to advise the Secretariat when enacting legislation implementing an UNCITRAL model law.

E. General enquiries

57. The Secretariat currently addresses approximately 2,000 general enquiries per year concerning, inter alia, technical aspects and availability of UNCITRAL texts, working papers, Commission documents and related matters. Increasingly, these enquiries are answered by reference to the UNCITRAL website.

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[26] Available from www.uncitral.org/uncitral/uncitral_texts/insolvency.html.
[27] Ibid.
[28] Available from www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html.
[29] Available from www.uncitral.org/uncitral/uncitral_texts/arbitration.html.
[30] Available from www.uncitral.org/uncitral/publications/yearbook.html.
[31] Available from www.uncitral.org/uncitral/uncitral_texts/arbitration.html.

F. Briefings for Permanent Missions in Vienna

58. The UNCITRAL Secretariat held briefings for Permanent Missions of States in preparation for the forty-eighth session of UNCITRAL.

G. Information lectures in Vienna

59. The Secretariat provides upon request information lectures in-house on the work of UNCITRAL to visiting university students and academics, members of the bar, Government officials including judges and others interested. Since the last report, lectures have been given to visitors from, inter alia, Austria, China, France, Germany, Greece, Hungary, Latin America, Moscow, Mozambique, Turkey and visiting delegations from Brazilian Vis Moot, Cicero League of International Lawyers, European Law Students' Association (ELSA), Moot Alumni Association, Kazakhstan, Mozambique and Saudi Arabia.

IV. Resources and funding

60. The costs of most technical cooperation and assistance activities are not covered by the regular budget. The ability of the Secretariat to implement the technical cooperation and assistance component of the UNCITRAL work programme is therefore contingent upon the availability of extrabudgetary funding.

61. The Secretariat has explored a variety of ways to increase resources for technical assistance activities, including through in-kind contributions. In particular, a number of missions have been funded, in full or in part, by the organizers. Additional potential sources of funding could be available if trade law reform activities could be mainstreamed more regularly in broader international development assistance programmes. In this respect, the Commission may wish to provide guidance on possible future steps.

A. UNCITRAL Trust Fund for symposia

62. The UNCITRAL Trust Fund for symposia supports technical cooperation and assistance activities for the members of the legal community in developing countries, funding the participation of UNCITRAL staff or other experts at seminars where UNCITRAL texts are presented for examination and possible adoption and fact-finding missions for law reform assessments in order to review existing domestic legislation and assess country needs for law reform in the commercial field.

63. During the period under review, a new contribution of Euro 15,000 (earmarked for activities related to Euro-Mediterranean Community of International Arbitration) was received from the Government of France as well as a contribution of US$ 20,000 by the Government of Indonesia. The Government of the Republic of Korea, through its Ministry of Justice provided a contribution of US$ 17,336.90 for the participation of the UNCITRAL Secretariat in the APEC EoDB project.

64. At its 47th Session (New York, 7-18 July 2014), the Commission appealed to all States, international organizations and other interested entities to consider making contributions to the Trust Fund for UNCITRAL symposia, if possible, in the form of multi-year contributions, or as specific-purpose contributions, so as to facilitate planning and enable the Secretariat to meet the increasing requests from developing countries and countries with economies in transition for training and technical legislative assistance (A/69/17, paras. 167-168). Potential donors have also been approached on an individual basis.

65. The Commission may wish to note that, in spite of efforts by the Secretariat to solicit new donations, funds available in the Trust Fund are sufficient only for a very small number of future technical cooperation and assistance activities. Efforts to organize the requested activities at the lowest cost and with co-funding and cost sharing whenever possible are ongoing. However, once current funds are exhausted, requests for technical cooperation and assistance involving the expenditure of funds for travel or to meet other costs will have to be declined unless new donations to the Trust Fund are received or alternative sources of funds can be found.

66. The Commission may once again wish to appeal to all States, relevant United Nations Agencies and bodies, international organizations and other interested entities to make contributions to the Trust Fund, if possible in the form of multi-year contributions, so as to facilitate planning and to enable the Secretariat to meet the demand for technical cooperation and assistance activities and to develop a more sustained and sustainable technical assistance programme. The Commission may also wish to request Member States to assist the Secretariat in identifying sources of funding within their Governments.

B. UNCITRAL Trust Fund to grant travel assistance to developing countries that are members of UNCITRAL

67. The Commission may wish to recall that, in accordance with General Assembly resolution 48/32 of 9 December 1993, the Secretary-General was requested to establish a Trust Fund to grant travel assistance to developing countries that are members of UNCITRAL. The Trust Fund so established is open to voluntary financial contributions from States, intergovernmental organizations, regional economic integration organizations, national institutions and non-governmental organizations, as well as to natural and juridical persons.

68. In the period under review, a contribution in the amount of euro 5,000 was received from the Government of Austria, as well as another contribution, in the amount of US$ 3,000 by the Commercial Finance Association (CFA), both to whom the Commission may wish to express its appreciation.

69. During the same reporting period, the available Trust Fund resources were used to facilitate participation at the 47th session of UNCITRAL in New York in July 2014 for delegates from Kenya, Honduras and El Salvador, as well as for a delegate of Mexico to participate in the 25th session of WG VI in New York, a delegate of El Salvador in the 23rd session of WG I in Vienna and a delegate of Colombia in the 24th session of WG I in New York. In order to allow for broader

assistance despite the limited resources of the fund, cost coverage in each case has been provided either for the air ticket, or for the DSA only.

70. In order to ensure participation of all Member States in the sessions of UNCITRAL and its Working Groups, the Commission may wish to reiterate its appeal to relevant bodies in the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that are members of the Commission.

71. It is recalled that in its resolution 51/161 of 16 December 1996, the General Assembly decided to include the Trust Funds for UNCITRAL symposia and travel assistance in the list of funds and programmes that are dealt with at the United Nations Pledging Conference for Development Activities.

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Coordination activities

Note by the Secretariat

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I. Introduction

1. In resolution 34/142 of 17 December 1979, the General Assembly requested the Secretary-General to place before the United Nations Commission on International Trade Law a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in the field.

2. In resolution 36/32 of 13 November 1981, the General Assembly endorsed various suggestions by the Commission to implement further its coordinating role in the field of international trade law.[1] Those suggestions included presenting, in addition to a general report of activities of international organizations, reports on specific areas of activity focusing on work already under way and areas where unification work was not under way but could appropriately be undertaken.[2]

3. This report, prepared in response to resolution 34/142 and in accordance with UNCITRAL's mandate,[3] provides information on the activities of other international organizations active in the field of international trade law in which the UNCITRAL secretariat has participated, principally working groups, expert groups and plenary meetings. The purpose of that participation has been to ensure coordination of the related activities of the different organizations, share information and expertise and avoid duplication of work and the resultant work products.

4. The Commission may wish to note the increasing involvement of the Secretariat in initiatives of other organizations. This is a recurrent pattern in recent years, consistent with the increase in the Secretariat's technical assistance activities,[4] and which is expected to continue and even increase in future.

II. Coordination activities

A. The International Institute for the Unification of Private Law and the Hague Conference on Private International Law

International Institute for the Unification of Private Law (Unidroit)

5. The Secretariat participated in Unidroit work in the area of contract law, reviewing work in the area of contract farming and participating as an observer in the first meeting of the Working Group on Long-Term Contracts (Rome, 19-23 January 2015), which was established for the purpose of formulating proposals for possible amendments and additions to the black-letter rules and comments of the Unidroit Principles of International Commercial Contracts 2010.

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[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17* (A/36/17), paras. 93-101.

[2] Ibid., para. 100.

[3] See General Assembly Resolution 2205 (XXI), sect. II, para. 8.

[4] See A/CN.9/775.

Hague Conference on Private International Law (HccH)

6. The Secretariat continued to participate as an observer in meetings of the HccH Working Group on Choice of Law in International Contracts (teleconference, 17 September 2014). The Working Group finalized its work on this non-binding instrument, and the Hague Principles on Choice of Law in International Commercial Contracts were approved on 19 March 2015. It is expected that HccH will submit the Principles to the Commission for consideration for endorsement at its 48th session.

Joint activities with Unidroit and HCCH

7. The UNCITRAL secretariat hosted the tripartite coordination meeting with Unidroit and HccH, at which current work of the three organizations and potential areas for cooperation were discussed (Vienna, 30 April 2015). Attention was given to areas of mutual interest including The Hague Principles on Choice of Law in International Commercial Contracts (see para. 6 above), the Fourth Protocol to the Cape Town Convention on Matters Specific to the Agricultural, Construction and Mining Equipment (see para. 34 below) and security interests in non-intermediated securities (dealt with in the UNCITRAL Model Law on Secured Transactions currently being drafted by UNCITRAL Working Group VI). Cooperation between regional centres in the Asia-Pacific region, and in provision of judicial training at regional level was also discussed.

B. Other organizations

8. The Secretariat undertook other coordination activities with various international organizations. Most of such activities included provision of comments on documents drafted by those organizations, and participation in various meetings and conferences with the purpose of briefing about the work of UNCITRAL or to provide an UNCITRAL perspective on the matters at stake.

1. General

9. The Secretariat visited the Swiss Institute of Comparative Law (SICL) to discuss possibilities for joint cooperation, including in the areas of research and business & human rights (Lausanne, Switzerland, 8 May 2014).

10. The Secretariat remained actively involved in the Inter-Agency Cluster on Trade and Productive Capacity.[5] In addition to participating in meetings (via teleconference) and providing inputs to various documents, the Secretariat also attended a face to face meeting to discuss the possible establishment of a Global Multi Donor Trust Fund on Trade and Productive Capacity (Geneva, Switzerland, 9 September 2014).

11. The Global Forum on Law, Justice and Development (GFLJD) is a permanent global forum, established at the initiative of the World Bank, that aims to exchange and disseminate innovative legal solutions for development. It is intended to spur both South-South and North-South collaboration. The activities of the Forum are multidisciplinary and address economic, legal and technical dimension of the

[5] See A/CN.9/725.

targeted issues. One of such activities is the Law, Justice and Development Week (see para. 31 below). The GFLJD is supported by an online platform that is instrumental to disseminate knowledge and is freely accessible by the general public. The Forum is organized around thematic working groups, which, among others, focus on issues such as justice and rule of law reform; law and the economy; governance and anticorruption. The UNCITRAL secretariat was appointed as co-leader of the Law and Economy Working Group, with effect from September 2014.

12. As part of the New York State Bar Association International Section's Seasonal Meeting, on "Rebuilding the Transatlantic Marketplace: Austria and Central Europe as Catalysts for Entrepreneurship and Innovation", the Secretariat co-hosted an UNCITRAL-day which provided an opportunity to engage with members of the Association on topics of interest to UNCITRAL. Structured in a series of round tables, the UNCITRAL day focused, inter alia, on cross-border insolvency, the UNCITRAL transparency rules in Investor-State Arbitration, security interests, e-commerce and international sale of goods (Vienna, 16 October 2014).

13. The Secretariat attended the annual meeting of the Advisory Committee on Private International Law (Washington, D.C., 2-4 November 2014).

14. The Secretariat met with the Municipality of The Hague, the Netherlands Ministry of Foreign Affairs, The Hague Conference on Private International Law and the Hague Institute for Global Justice to discuss future collaboration in view of the UNCITRAL Secretariat projected presence in The Hague (The Hague, The Netherlands, 16-17 December 2014).

Asia-Pacific Economic Cooperation (APEC)

15. The Secretariat participated in the APEC Economic Committee and the "APEC Ease of Doing Business (EoDB) 2014 Stocktaking Workshop" held during the Third Senior Officials Meeting (SOM3) of APEC (Beijing, 13-17 August 2014). The EoDB Stocktaking Workshop provided the opportunity for the Secretariat to highlight its cooperation with the Korean Ministry of Justice on the APEC EoDB project on enforcing contracts and also to present on the close relationship between UNCITRAL texts and the APEC EoDB project in general (see also A/CN.9/837). On 8 November 2014, the APEC Ministers in their Joint Ministerial Statement, welcomed the joint efforts of the Economic Committee and UNCITRAL to build awareness of private international law instruments to facilitate cross-border trade and investment, enhance ease of doing business, and foster effective enforcement of contracts and efficient settlement of business disputes.

16. The Secretariat also participated in the APEC Economic Committee and the "APEC Workshop on UNCITRAL Instruments and the EoDB initiative" during the First Senior Officials Meeting (SOM1) of APEC (Clark, The Philippines, 2-4 February 2015). The full-day workshop was dedicated to assessing the relevance of UNCITRAL texts and the EoDB initiative and to share implementation experiences in the areas of obtaining credit, enforcing contracts and trading across borders. It also provided the opportunity for the Secretariat to present ongoing work at UNCITRAL and to discuss how UNCITRAL texts could be incorporated into APEC's EoDB initiative. The APEC Economic Committee decided to establish a new APEC Economic Committee Friends of the Chair (FotC) Group on

Strengthening Economic and Legal Infrastructure ("SELI") and the Secretariat hopes to contribute to the Group's work.

Rule of Law

17. The UNCITRAL secretariat undertook or facilitated several coordination activities on the rule of law in those areas of work of the United Nations and other entities that are of general relevance to UNCITRAL. The activities listed below are in addition to those already reported at the forty-seventh session of the Commission, in 2014.[6]

18. The UNCITRAL secretariat contributed to an addendum to the 2013 report of the Secretary-General on strengthening and coordinating the United Nations rule of law activities (A/68/213/Add.1) that identified some of the most important linkages between the rule of law and the three pillars upon which the United Nations is built: peace and security, human rights and development. The report highlighted the role of UNCITRAL and its standards in that context and the Secretary-General recommended that the General Assembly may wish to consider benefiting from a closer interaction with some of the existing subsidiary bodies, such as UNCITRAL, in developing those linkages.[7] The UNCITRAL secretariat also contributed to the preparation of the 2014 and 2015 annual reports of the Secretary-General to the General Assembly on strengthening and coordinating United Nations rule of law activities (A/69/181; a symbol number for the 2015 report was not known at the time of the submission of this document).

19. The UNCITRAL secretariat continued to provide comments on the draft guiding principles on business and the rule of law, currently under consideration by the United Nations Secretariat. It also continued efforts towards advancing the work on a draft guidance note of the Secretary-General on the United Nations approach to promotion of the rule of law in commercial relations. The latter was brought to the attention of the Commission at its forty-sixth and forty-seventh sessions, in 2013 and 2014.[8] As the Commission was informed in 2014, the draft guidance note was presented at the expert level meeting of the Rule of Law Coordination and Resource Group of the United Nations on 20 December 2013. The Commission was informed at that time that the text was undergoing final approval and was expected eventually to be circulated across the United Nations, including United Nations country offices.[9] In view of the continuation of discussion in other fora around the concept of the rule of law and its possible reflection in the post-2015 development agenda to be considered by the General Assembly, it was suggested that the goals expressed in the draft guidance note might be more expeditiously pursued through another route. At the current session, the Commission is invited to consider under a different agenda item whether, and if so how, the work on the draft guidance note should be progressed.

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[6] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 220-233.

[7] A/68/213/Add.1, paras. 71, 72 and 98.

[8] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 273; and ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 222 and 224-227.

[9] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 222.

Post-2015 development agenda

20. It may be recalled that, at its forty-sixth and forty-seventh sessions, in 2013 and 2014, the Commission learned about initiatives across the United Nations system to formulate sustainable development goals and a post-2015 international development agenda.[10] At that time, the Commission noted the relevance of UNCITRAL work to these initiatives and requested its Bureau and its Secretariat to take appropriate steps to ensure that the areas of work of UNCITRAL and the role of UNCITRAL in the promotion of the rule of law and sustainable development were not overlooked.[11]

21. Pursuant to those requests, efforts were made to ensure that the message of UNCITRAL was conveyed to the States negotiating the post-2015 development agenda. For such purpose, two events were organized in conjunction with sessions of UNCITRAL:

(a) A side event on "UNCITRAL standards for transparency, accountability and good governance" (New York, United States of America, 17 July 2014) that took place in the margins of the forty-seventh session of UNCITRAL and the thirteenth (last) session of the Open Working Group on Sustainable Development Goals (New York, United States, 14-18 July 2014). Invited representatives of States and international organizations highlighted the relevance of standards elaborated by UNCITRAL to issues of good governance being discussed in the context of the post-2015 development agenda, including in the Open Working Group;[12] and

(b) A briefing on "Means of implementation: harmonizing and modernizing the law of international trade" (New York, United States, 5 February 2015) that took place in the margins of the sixty-second session of UNCITRAL Working Group II (Arbitration and Conciliation) (New York, United States, 2-6 February 2015) and before the General Assembly's High-level Thematic Debate on Means of Implementation for a Transformative Post-2015 Development Agenda (New York, United States, 9-10 February 2015). The briefing was organized by the Chair of UNCITRAL at its forty-seventh session and sponsored by States members of the Bureau of UNCITRAL at its forty-seventh session: Croatia, El Salvador, Italy, Mauritius and the Republic of Korea. Invited speakers presented indicators relevant to harmonizing and modernizing the law of international trade as an essential means of implementation of the post-2015 development agenda, including sustainable development financing.[13] On both occasions, the importance of duly taking into account the contribution of modern and harmonized commercial law to sustainable development and the need to continuously build adequate capacity of States to implement sound commercial law reforms were highlighted.

22. In addition, the Chair of UNCITRAL at its forty-seventh session delivered a statement on "Improving Cross-Border Trade and Investment: Models of Cooperation

[10] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 274-275; and ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 220-233.

[11] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 275; and ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 228.

[12] Materials of the side event are available at www.uncitral.org/uncitral/en/data/whats_new/2014_07_uncitral-standards-for-transparency-accountability-and-good-governance.html.

[13] Materials of the briefing are available at www.uncitral.org/pdf/english/whats_new/2015_02/5_February_2015_briefing_consolidated_statements.pdf.

among Stakeholders in Theory and Practice" (Washington, D.C., 20 October 2014) during the World Bank's Law, Justice and Development Week 2014 (see also paras. 31 below and 11 above), and another statement (New York, United States, 10 February 2015) during UNCTAD's side event on "Making the Sustainable Development Goals Work: Harnessing Trade, Investment, Finance and Technology for Sustainable Development". On both occasions, the UNCITRAL Chair explained ways for positioning UNCITRAL in the post-2015 development agenda.

23. At the Secretariat level, the UNCITRAL secretariat has been included as member of the United Nations Technical Support Team, the interagency coordination mechanism for support to Member States on the post-2015 negotiation process of the General Assembly. In that capacity, the UNCITRAL secretariat was able to contribute to the formulation of indicators to the goals and targets of the post-2015 development agenda proposed in the report of the Open Working Group on Sustainable Development Goals (A/68/970 and Corr.1), highlighting in particular that:

(a) In indicators to goals and targets related to good governance, rule of law and access to justice, issues of civil justice, including contract enforcement, availability of arbitration and alternative dispute resolution mechanisms for resolution of commercial disputes, and judicial training to address the capacity of local judges to properly interpret and apply laws, should not be overlooked. Indicators should focus not only on concerns of individuals but also capture legitimate interests of business entities in good governance, including those of micro, small and medium-sized enterprises in ease of incorporation, receiving licenses and other approvals and other aspects of doing business in a particular society;

(b) In indicators to targets aimed at increasing representation of developing countries in institutions of global governance, including UNCITRAL, the need to capture not only quantitative but also qualitative aspects of increased participation of all States in institutions of global governance and building required local capacity to that end, should not be overlooked;

(c) In indicators to targets referring to non-discriminatory laws for sustainable development, compliance with internationally accepted standards should be factored as an essential contributor to the quality of the legal framework and its implementation.

24. Finally, efforts were made to increase cooperation with academic institutions through the Academic Council on the United Nations System (ACUNS)[14] so as to stimulate UNCITRAL-related research and publications, including on relevance of UNCITRAL to the implementation of the post-2015 development agenda. In this context, the Secretariat made a presentation on "The importance of a solid commercial legal framework for sustainable development" at ACUNS Vienna 2015 Annual Conference, which was later published in the proceedings of the conference (Vienna, 15 January 2015).

[14] See: http://acuns.org/.

2. Micro, small and medium-sized enterprises (MSMEs)

25. In order to assist the deliberations of Working Group I (under its current mandate), the Secretariat established or strengthened links with other organizations active in the promotion of MSMEs. In this context:

(a) The Secretariat attended as an observer the 11th annual conference of the Corporate Registers Forum (Abu Dhabi, 3-12 March 2015) at which the state of the art and current issues of business registration practices around the world were discussed. Among others, the Conference focused on the role of business registration in economic growth; initiatives to streamline business registration; and the use of information and communication technology or web-based solutions in business registration. All these topics are particularly relevant to Working Group I's discussions on business registration. The Secretariat was also given the opportunity to deliver a presentation on the current mandate of the Working Group.

(b) The Secretariat held meetings with the World Bank business registration experts to become apprised of the Bank's experience in this area with a view to preparing a draft legislative text on business registration (see A/CN.9/825, para. 43) (Washington, DC., 9 April 2015).

3. Procurement

26. In accordance with requests of the Commission and Working Group I (under its former mandate on Public Procurement), the Secretariat has established links with other international organizations active in procurement reform to foster cooperation with regard to the UNCITRAL Model Law on Public Procurement (2011) and its accompanying Guide to Enactment (2012). The aims of such cooperation are to ensure that reforming governments and organizations are informed of the policy considerations underlying those texts, so as to promote a thorough understanding and appropriate use of the Model Law, at both regional and national levels. The Secretariat is taking a regional approach to this cooperation, and activities with the multilateral development banks in several regions, focusing on good governance and anti-corruption (in which procurement reform plays a pivotal role), are envisaged.

27. To this end, the Secretariat participated, among others, in the following activities:

(a) The work of the World Bank's International Advisory Group on Procurement, which advises the World Bank on its Procurement Policy Review, including participation in a meeting held in Cairo, to review and comment on the proposed Phase II of the reforms (Cairo, 15-16 February 2015);

(b) The development of a World Bank system for benchmarking public procurement, including virtual participation in a relevant meeting (Washington, D.C., 14 March 2015);

(c) The work of the team of specialists in Public-Private Partnerships (PPPs) of the United Nations Economic Commission for Europe (UNECE), which meets and reviews policy issues in PPPs, including on the Role of PPPs in financing the post-2015 United Nations Development Agenda;

(d) The work of the Meeting of Leading Practitioners on Public Procurement of the Organization for Economic Co-operation and Development (OECD), focussing on designing procurement performance indicators and green public procurement; and

(e) The work of the Sustainable Public Procurement Initiative Network established by the United Nations Environment Programme (UNEP), including serving on its working groups on developing principles for sustainable public procurement, addressing legal barriers, and promoting collaboration between international organizations.

4. Dispute settlement

28. The Secretariat activities in the area of international commercial arbitration and conciliation included:

(a) Participation in the United Nations Conference on Trade and Development (UNCTAD) World Investment Forum 2014 with regard to transparency and international investment agreements (Geneva, Switzerland, 15-16 October 2014). UNCITRAL regularly takes part in the World Investment Forum as part of its ongoing cooperation with UNCTAD in the field of International Investment Arbitration;

(b) Cooperation with the International Bar Association (IBA) with regard to their annual conference in Tokyo (October 2014) and the fourth Asia Pacific Regional Conference in Singapore (March 2015);

(c) Coordination with OECD with respect to the Investment Security in the Mediterranean (ISMED) Initiative, which supports investment policy reform in the Middle East and North Africa (see A/CN.9/809, para. 15). This included attendance at the conference "Defining a Way Forward for Infrastructure Investment in the Middle-East and North Africa (MENA)" (Paris, 4-5 December 2014) and co-organization of the International Conference for Euro-Mediterranean Community of International Arbitration (see A/CN.9/837);

(d) Cooperation with the International Centre for Trade and Sustainable Development (ICTSD), and participation in the E15 Initiative Task Force on Investment Policy, which also included attendance at the following activities: (i) the ICTSD Expert Group Scoping Meeting on Investment at the World Economic Forum (New York, United States, 10 December 2014, via teleconference); (ii) the coordination meeting on international investment agreement reforms (Vienna, 22 January 2015, via teleconference); and (iii) the First Task Force Workshop on Investment Policy (Geneva, Switzerland, 23-24 March 2015);

(e) Coordination with UNCTAD with respect to the publication of the UNCTAD International Investment Arbitration (IIA) Issues Note and participation in the expert group meeting on investor-State dispute settlement (ISDS) reforms to provide information on the work of UNCITRAL in the field of transparency in treaty-based investor-State arbitration (Geneva, Switzerland, 27 February 2015);

(f) Participation in the OECD Conference on Investment Treaties: Policy Goals and Public Support (Paris, 16 March 2015);

(g) Coordination with the International Centre for Settlement of Investment Disputes (ICSID) on matters related to international investment arbitration reforms;

(h) Coordination with the Energy Charter Treaty (ECT) secretariat and participation in their expert groups, including the group on mediation;

(i) Coordination with the German cooperation organization, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) with respect to arbitration projects in the Balkan region;

(j) Coordination with the International Chamber of Commerce (ICC) with regard to possible cooperation on joint conferences, training, and use of resources in relation to instruments on international arbitration;

(k) Coordination with the European Union and the OPEC Fund for International Development (OFID) with respect to the financing of the transparency registry;

(l) Coordination with arbitration institutions with respect to use of the UNCITRAL Arbitration Rules;

(m) Coordination with arbitration institutions and organizations (including the International Council for Commercial Arbitration (ICCA) and the International Federation of Commercial Arbitration Institutions (IFCAI)) regarding the revision of the UNCITRAL Notes on Organizing Arbitral Proceedings;

(n) Coordination with organizations active in the field of mediation (including the International Mediation Institute (IMI)) for the preparation of possible work in the field of enforcement of settlement agreements; and

(o) Coordination with various institutions including OECD, ICSID, The Permanent Court of Arbitration (PCA), The Arbitration Institute of the Stockholm Chamber of Commerce, the ECT secretariat, the International Arbitration Institute (IAI), and the Geneva Centre for International Dispute Settlement (CIDS), in relation to possible future work in the field of concurrent proceedings.

5. Electronic commerce

29. The Secretariat carried out coordination activities with international and regional organizations involved in the formulation of legal standards in the field of electronic commerce to ensure their compatibility with UNCITRAL texts and principles. Among others, ongoing coordination with the United Nations Economic and Social Commission for Asia and the Pacific (UN/ESCAP), UNCTAD and APEC is to be noted.

30. In the context of UN/ESCAP preparing a Regional Agreement for the Facilitation of Cross-border Paperless Trade, the Secretariat participated as an observer in the First Meeting of the Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation aiming to contribute to the preparation of such regional agreement (Bangkok, 31 March-4 April 2015).

6. Insolvency

31. The Secretariat participated in a session of the World Bank's Insolvency Law Task Force, held in conjunction with the World Bank's Law, Justice and

Development Week to consider updating the Insolvency and Creditor/Debtor Regimes (ICR) Standard (comprising the World Bank Principles and recommendations of the UNCITRAL Legislative Guide on Insolvency Law) (Washington D.C., 23-24 October 2014), specifically the Principles relating to the following:

(a) Secured transactions: an update on the work regarding the Principles relating to secured transactions was provided, with a list of questions and a summary of proposed changes to those Principles to be sent out to Task Force members shortly;

(b) Directors' obligations in the period approaching insolvency: the proposed revision of Principle B2 concerning director's and officers' accountability, to align it with the recent recommendations contained in Part four of the UNCITRAL Legislative Guide on Insolvency Law, was discussed and a number of suggestions made. A further draft was to be prepared to reflect those suggestions and approval sought in accordance with World Bank processes; and

(c) Insolvency treatment of financial contracts: a paper on the treatment of financial contracts in insolvency was circulated and possible revision of the World Bank Principle C10 considered. It was agreed that the Principle should be revised. With the assistance of experts, the World Bank was to prepare a redrafted version of the Principle and submit it to Task Force members for comment, following which approval of the revised Principle could be sought at a subsequent Task Force meeting.

32. The Secretariat co-organized the 11th joint UNCITRAL/INSOL/World Bank Multinational Judicial Colloquium (San Francisco, United States, 21-22 March 2015). Over 78 judges and government officials attended from over 41 States, representing a broad range of practical experience and perspectives, particularly with respect to cross-border insolvency, from diverse legal systems and legal traditions. As in previous years, a number of participants were first time attendees. The report of the Colloquium is available on the UNCITRAL website (www.uncitral.org/uncitral/en/commission/colloquia.html).

7. Security interests

33. Coordination with relevant organizations was pursued to ensure that States are offered comprehensive and consistent guidance in the area of secured transactions law.

34. Specific activities of the Secretariat included:

(a) Coordination with the New York State Bar Association for its endorsement of the United Nations Convention on the Assignment of Receivables in International Trade (New York, 2001) (the "Assignment Convention") (Vienna, 16 October 2014);

(b) Coordination with the ICC for its endorsement of the Assignment Convention (October-November 2014);

(c) Coordination with the International Factors Group for its endorsement of the Assignment Convention (October-November 2014);

(d) Coordination with Unidroit to ensure that work of the Unidroit Mining, Agriculture and Construction (MAC) Protocol Study Group does not overlap or conflict with the security interests texts prepared by UNCITRAL (Rome, 15-17 December 2014);

(e) Coordination with the International Financial Corporation in providing law reform assistance to States in line with the recommendations of the UNCITRAL Legislative Guide on Secured Transactions (Colombo, Sri Lanka, 18-19 September 2014; Rabat, 24-25 September 2014; and Port of Spain, 2-6 February 2015);

(f) Coordination with the work of the Organization of American States in local capacity-building with respect to secured transactions (Kingston, 10-12 February 2015);

(g) Coordination with the World Bank to prepare a revised version of the joint UNCITRAL-World Bank Standard on Insolvency and Creditor Rights to include the key recommendations of the UNCITRAL Legislative Guide on Secured Transactions (ongoing); and

(h) Coordination with the European Commission to ensure that a coordinated approach is adopted with respect to the law applicable to third-party effects of assignments of receivables (ongoing).

World Bank Insolvency and Creditor Rights Standard (ICR Standard)

35. At its forty-seventh session, in 2014, the Commission "noted with appreciation the efforts of the Secretariat to coordinate with the World Bank in preparing a revised version of the World Bank Insolvency and Creditor Rights Standard (the "ICR Standard") on the basis of the World Bank Principles for Effective Insolvency & Creditor Rights Systems (the "Principles") revised to incorporate the key recommendations of the Secured Transactions Guide, and to make reference to the UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property ....[15] It was widely felt that such coordination effort was important and should continue in an expeditious manner. Thus, the Commission renewed its mandate to the Secretariat to continue to coordinate with the World Bank and to finalize a revised version of the ICR Standard that would be consistent with relevant UNCITRAL texts".[16]

36. At its meetings in October 2014 and May 2015, the World Bank Task Force was asked to consider only the World Bank Principles dealing with secured transactions. The status of the revised ICR Standard that was jointly prepared by the World Bank and the Secretariat, considered by the Task Force at its meeting in October 2013 and revised thereafter in accordance with the above-mentioned mandate remains unclear. The Commission may thus wish to consider this matter and confirm or revise the mandate given to Secretariat to coordinate with the World Bank so as to include in the revised ICR Standard the key recommendations of the Secured Transactions Guide and references to the other UNCITRAL texts on secured transactions. In this connection, the Commission may wish to take into account the need for both duplication of effort and divergence in the texts to be

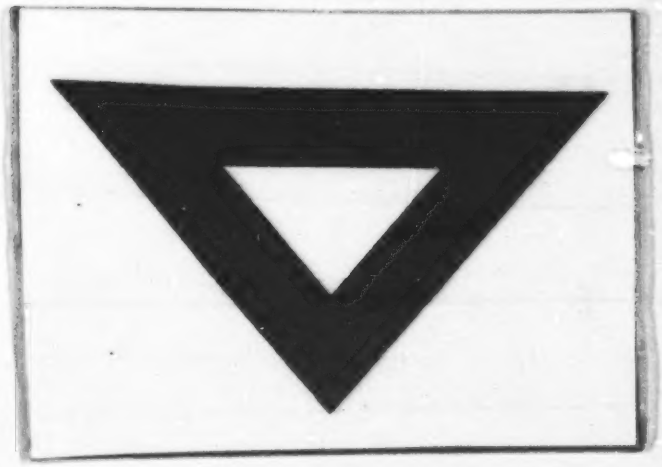
[15] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 185.

[16] Ibid., para. 187.

avoided, with due respect for the different mandates of the Commission and the World Bank.[17]

8. Commercial Fraud

37. Further to the request of the Commission (A/63/17, para. 347; A/64/17, para. 354, and A/68/17, para. 312, in relation to commercial fraud, the Secretariat continued to coordinate with the United Nations Office on Drugs and Crime (UNODC) in its work on economic crime and identity fraud. In particular, the Secretariat remains a member of UNODC's core group of experts on identity-related crime, which was formed to bring together on a regular basis representatives from governments, private sector entities, international and regional organizations and academia to pool experience, develop strategies, facilitate further research and agree on practical action against identity-related crime. Work planned by the UNODC core group of experts on the development of model legislation on identity-related crime did not proceed due to a lack of extrabudgetary resources, however the Secretariat will continue to participate in the core group of experts once its work proceeds. The Commission may also wish to note that UNODC also plans to develop, again subject to the availability of extrabudgetary funds, a web-based repository of information on identity-related crime, as well as a comprehensive package of training tools (see E/CN.15/2014/17, paras. 72 to 75 for more details).



[17] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 174.